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FREE PARLIAMENTS:

OR, A

VINDICATION

OF THE

Fundamental Right

OF THE

COMMONS of ENGLAND

In Parliament Aſſembled,

To be ſole Judges of all thoſe Privileges of *the Electors*, and of *the Elected*; which are abſolutely neceſſary to Preſerve *Free Parliaments*, and a *Free People.*

BEING A

JUSTIFICATION

Of the Proceedings of the

Honourable Houſe of COMMONS,

In the CASE of

ASHBY againſt *WHITE.*

Nolumus Leges Angliæ Mutari.

By Sir *HUMPHREY MACKWORTH*;
a Member of Parliament.

Printed in the Year, MDCCIV.

A SPEECH

IN THE CASE OF

HOUSEHOLD HORSE OF COMMONS

OF THE PROCEEDINGS OF THE

IMPEACHMENT

BEING A

VINDICATION

OF THE

EARL PARLIAMENTS:

OR A

FUNDAMENTAL RIGHT

OF THE

COMMONS OF ENGLAND

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ELECTORS AND OF THE ELECTED, WHICH ARE EXPLICITLY

ACCESSIBLY TO PREVENT ALL PARLIAMENTS, AND

EVERY PARLIAMENT ASSEMBLED.

BY SIR HOWARD GRACKMORTH:

A MEMBER OF PARLIAMENT.

Printed in the Year, MDCCIV.

PREFACE.

THE Houſe of Commons *have on all Occaſions, and more particularly in the laſt Seſſion of Parliament, ſo fully demonſtrated* their Duty and Loyalty to their Sovereign, their Fidelity to their Country, and their Zeal to diſpatch the neceſſary Supplies, and other Publick Affairs, for the general Good and Welfare of the People, *that it muſt be a Matter of Admiration, and even Aſtoniſhment to all good Men to hear, that any Commoner in* England, *in his right Senſes, ſhould be wanting to have the greateſt Reſpect and Veneration for that Auguſt Aſſembly.*

A Free Parliament hath ever been eſteemed, and found by conſtant Experience, to have been the great Bulwark of the Rights and Liberties of the People: *And although it is not to be imagined, that there is any ſuch thing as Infallibility upon Earth, yet next* under God, and a Gracious Sovereign, our Happineſs hath ever been ſecured by their Adminiſtration.

It is true indeed, that the Two Houſes of Parliament have had the Misfortune of late to differ in Opinion from one another; but, ſince it muſt be preſumed, that Both do aim at the ſame Common End, the Publick Good; it cannot be conceiv'd but right Reaſon will at laſt prevail, and produce that Peace and Union *ſo earneſtly recommended from the Throne,* and ſo very becoming all thoſe who are joined together in the ſame Religion and Intereſt.

The Particulars, in which they do at preſent vary in their Judgments, are of different Natures; but that which is moſt ſtrongly argued againſt the Commons, is, The Caſe *of* Aſhby *and* White, *upon which a learned Argument hath been lately publiſhed, by their Lordſhips, for whom the Author of this Treatiſe has ſo great a Deference and Veneration, that in his private Capacity, abſtracted from the publick Truſt repoſed in him, he ſhould readily ſubmit his own Opinion to their ſuperior Judgments.*

But, ſince he has the Honour to be one of thoſe, who are intruſted with the Rights and Liberties of their Country, and ſince it is the Duty of all Perſons, in that Station, to act with Sin-

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But, ſince he has the Honour to be one of thoſe, who are intruſted with the Rights and Liberties of their Country, and ſince it is the Duty of all Perſons, in that Station, to act with

Sincerity and Courage, according to the best of their Understanding, in discharge of the great Trust reposed in them, and in Defence of the Rights of the Commons of England; *he humbly hopes it cannot possibly give the least Offence to any Person whatsoever, that he hath, in all dutiful manner, humbly offer'd to Consideration, some of those Reasons that induced the House of Commons to pass such Votes and Resolutions on this Occasion, as have been published to all the World.*

If the Arguments, in this Treatise, are of any weight, if it be therein sufficiently proved, that the Commons *have discharged their Duty in this Particular, all good Men will be glad to see that* Constitution *supported and maintained, which is absolutely necessary to preserve* the Publick Safety: *And if the Reasons here offered are not sufficient to convince some Persons of an Error, yet it may be reasonably hoped, they will so far prevail, as to convince all Men, that the Commons have acted with great Sincerity; and as they apprehended, for the general Good and Safety of the People.*

It will be also considered, That if so much can be said on the behalf of the Commons, by one of the weakest of their Members, what may be said by the whole House, when they shall have an Opportunity to answer for themselves.

But if the Commons have discharged their Trust with great Fidelity to the Publick, even in this particular Case, all Men of Temper will be inclined to have a very favourable Opinion of them in the other Matters in Variance, which may with far less Difficulty be brought to a right Determination; or at least they will be pleased to do that Justice to their Representatives, that they would have every other Person do to them; and that is, to suspend their Judgment till they have fairly heard what may be said in their Justification.

And here it must be confess'd, That it is a great Misfortune to England, *that any other Methods should be taken for adjusting the Misunderstandings between the Two Houses, than those that have been established in the Original Institution of Parliaments, and have ever been found successful to the Nation.*

When the Two great Parts of the Body Politick are so unhappy, as to differ about their Rights and Privileges, and the one will not agree to any Conference with the other in a Point of Judicature, it may indeed be very proper to appeal to the Sovereign Head of that great Body; *but whether it is con-*

ſiſtent with the Conſtitution of Parliaments to appeal to the People, who can never meet to decide the Controverſy, nor to hear the Caſe fairly argued and debated before them, is a Matter to be referr'd to farther Conſideration; for if there is a Neceſſity of chooſing Repreſentatives, becauſe it is not poſſible for all the People to meet together, and act in a judicial Capacity, how can it be thought proper that any Cauſe ſhould be referr'd back to their Determination.

And yet the Thing it ſelf is not more extraordinary, than the Manner of doing it, which I forbear to mention for particular Reſpects; for, though the Commons have ever had a Right of Impeaching others, it was never yet known that they themſelves were liable to be Impeach'd.

But, notwithſtanding the preſent Diſputes, it is not too late to hope for a good Underſtanding between the Two Houſes, (which is ſo abſolutely neceſſary to promote the Happineſs of Her Majeſty, and the Proſperity of the People) if the Differences within, are not induſtriouſly kept up by Incendiaries without Doors.

It is not poſſible to imagine, that Men of Quality, Eſtates, and Families, in either Houſe, can deſign to embroil the State with private Diſſentions, at a Time when there is ſo great Occaſion for an united Strength againſt the Common Enemy; and it can never be doubted, but the Houſe of Commons will be ready to embrace all reaſonable Methods of promoting a good Correſpondence with that Auguſt Aſſembly, amongſt whom, they have ſo many noble Friends, that have ever had a tender regard for their Rights and Privileges. And indeed, it is as much the Intereſt of the Commons to preſerve the juſt Rights of the Lords, as it is to preſerve their own, ſince neither can be ſecure without preſerving both.

Far be it then from the Thoughts of any true Engliſh Subject to believe, that their Repreſentatives have willingly engaged in this unhappy Controverſy; much leſs that they are contending for a Trifle, or a Shadow, and not for the Fundamental Rights and Privileges of all the Commons of England.

And if this be the Truth of the Caſe, if the Rights of the People (*whether Church-men or Diſſenters*) *are the things which are here contended for by the Commons; we may reaſonably hope, that however Men may differ in Opinion from one another in any other Matters, yet in theſe they will be all of one Mind, and united together.*

And when the People of England *ſhall have an Opportunity to be fully inform'd of all the Proceedings of both Houſes in the laſt Seſſion of Parliament, and eſpecially in the Caſe of* Wharton *and* Squire, *they will then be made more ſenſible who are the beſt Patriots of their Country, and on whom it is that they are chiefly to depend for their future Security.*

And it is pity That Caſe had not been ſtated amongſt all the reſt, and tranſmitted down to every County and Corporation, as an Inſtance of the Care of ſome great Men, to preſerve the Rights and Properties of the Subject.

But alas! it is the peculiar Misfortune of this Age, that the Houſe of Commons may neither defend the Prerogatives of the Crown, nor the Liberties of the People without Reproach.

But what Liberty may be taken by others, may more properly appear by the Facts themſelves, than by any private Repreſentation.

However this may be aſſerted with great Truth, That no Houſe of Commons ever diſcharg'd their Duty with greater Sincerity, or more Zeal for the Publick Good, how much ſoever they may have ſuffered for it; and of this the following Caſe, rightly conſider'd, will appear to be a moſt eminent Inſtance.

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The CASE *wherein* Matthew Aſhby *was Plaintiff againſt* William White, *and others, Defendants; was (in ſhort) as followeth.*

THE Plaintiff *Aſhby* declares, That *he being a Burgeſs and Inhabitant of the Borough of* Alesbury, *duly qualified to give his Vote in the Election of Members to ſerve in Parliament for the ſaid Borough, was there ready* (at the laſt Election) *and offered his Vote to the Defendants,* (who were the chief Officers, and had the Management of that Election) *for the Choice of Sir* Thomas Lee, *and* Simon Mayne *Eſq; and that the ſaid Defendants were then required to receive and admit of his Vote accordingly;* which they refuſed, and this he charges to be done *fraudulently and maliciouſly, to defeat him of that his Priviledge:* And becauſe his Vote, thus offer'd, was not received and admitted on the Poll, he concludes, That *he was hindred from giving his Vote, and the two Burgeſſes were elected without any Vote given by the Plaintiff, to his Damage,* &c. and after Verdict for the Plaintiff, (the Matter of Fact being not then conteſted) the Defendants by their Council, moved the Court of *Queen's Bench* in arreſt of Judgment; alledging, That this being a Matter *which did concern the High Court of Parliament, and was properly Cognizable in the Houſe of Commons, no inferiour Court could by Law take Cognizance thereof;* and this Point being ſolemnly argued, firſt by *Council,* and afterwards by the *Judges,* the ſaid Court did determine, That the Plaintiff had *no good Cauſe of Action,* and thereupon Judgment was given and entred for the Defendants.

Whereupon the Plaintiff brought a Writ of Error in Parliament, to reverſe the ſaid Judgment given, *in the Queen's Bench:* And *the Houſe of Peers* were of Opinion, That *the ſaid Judgment was Erroneous; that the Plaintiff had good Cauſe of Action, and ought to have Judgment.*

And thereupon the Houſe of Commons appointed a Committee to inſpect the Lord's Journals, relating to theſe Pro-

ceedings, and upon Report thereof in the laſt Seſſion of Parliament, they came to the following Reſolutions.

Reſolved, 'That according to the known Laws and Uſage 'of Parliaments, it is the ſole Right of the Commons of '*England* in Parliament aſſembled, (except in Caſes otherwiſe 'provided for by Act of Parliament) to examine and deter-'mine all Matters relating to the Right of Election of their 'own Members.

Reſolved, 'That according to the known Laws and Uſage 'of Parliaments, neither the Qualification of any Elector, 'or the Right of any Perſon elected, is cognizable or deter-'minable elſewhere, than before the Commons of *England* in 'Parliament aſſembled, except in ſuch Caſes as are ſpecially 'provided for by Act of Parliament.

Reſolved, 'That the examining and determining the Qua-'lification or Right of any Elector, or any Perſon elected, 'to ſerve in Parliament, in any Court of Law or elſewhere, 'than before the Commons of *England* in Parliament aſſem-'bled, (*except in ſuch Caſes as are eſpecially provided for by Act 'of Parliament*) will expoſe all Mayors, Bailiffs and other 'Officers, who are oblig'd to take the Poll, and make a Re-'turn thereupon, to Multiplicity of Actions, Vexatious 'Suits, and Unſupportable Expences, and will ſubject them 'to different and independent Juriſdictions, and inconſiſtent 'Determinations in the ſame Caſe, without Relief.

Reſolved, 'That *Matthew Aſhby* having in Contempt of 'the Juriſdiction of this Houſe, commenced and proſecuted 'an Action at Common Law againſt *William White*, and 'others, the Conſtables of *Aleſbury*, for not receiving his 'Vote at an Election of Burgeſſes to ſerve in Parliament for 'the ſaid Borough of *Aleſbury*, is guilty of a Breach of the 'Privilege of this Houſe.

Reſolved, 'That whoſoever ſhall preſume to commence 'or proſecute an Action, Indictment, or Information, which 'ſhall bring the Right of the Electors, or Perſons elected to 'ſerve in Parliament, to the Determination of any other 'Juriſdiction than that of the Houſe of Commons (except in 'Caſes ſpecially provided for by Act of Parliament) ſuch Per-'ſon and Perſons, and all Attorneys, Solicitors, Counſellors, 'and Serjeants at Law, Soliciting, Proſecuting, or Pleading 'in any ſuch Caſe, are guilty of a high Breach of the Privilege 'of this Houſe.

Ordered, *That the ſaid Reſolutions be fixt upon* Weſtminſter-Hall *Gate, ſign'd by the Clerk.*

Theſe

Theſe were the Votes and Reſolutions of the Houſe of Commons, who have been formerly neceſſitated to take the ſame Methods upon the like Occaſion. They did not willingly enter into this Controverſy, eſpecially at a juncture of time when *Peace and Union* were ſo neceſſary, and had been ſo earneſtly recommended from the Throne: But they found themſelves under a Neceſſity, (as they apprehended) of paſſing ſuch Votes and Reſolutions in *Defence of the Rights of the Commons of* England.

Upon theſe Proceedings of the Houſe of Commons, the Houſe of Peers were alſo pleas'd to come to the following Reſolutions.

It is Reſolved by the Lords Spiritual and Temporal in Parliament aſſembled, 'That by the known Laws of this King-'dom, every Freeholder, or other Perſon, having a Right to 'give his Vote at the Election of Members to ſerve in Par-'liament, and being wilfully denied or hindered ſo to do, by 'the Officer who ought to receive the ſame, may maintain 'an Action in the Queen's Courts againſt ſuch Officer, to 'aſſert his Right and recover Damages for the Injury.

It is Reſolved by the Lords Spiritual and Temporal in Parliament aſſembled, 'That the aſſerting that a Perſon having 'a Right to give his Vote at an Election, and being hindered 'ſo to do by the Officer who ought to take the ſame, is with-'out Remedy for ſuch Wrong, by the ordinary Courſe of 'Law; is deſtructive of the Property of the Subject, againſt 'Freedom of Elections, and manifeſtly tends to incourage 'Corruption and Partiality in Officers who are to make Re-'turns to Parliament, and to ſubject the Freeholders and other 'Electors to their Arbitrary Will and Pleaſure.

It is Reſolved by the Lords Spiritual and Temporal in Parliament aſſembled, 'That the declaring *Matthew Aſhby* 'guilty of a Breach of the Privilege of the Houſe of Com-'mons, for proſecuting an Action againſt the Conſtables of '*Aleſbury*, for not receiving his Vote at an Election, after 'he had in the known and proper Methods obtained a Judg-'ment in Parliament for Recovery of his Damages, is an 'unprecedented Attempt upon the Judicature of Parliament, 'and is in effect to ſubject the Law of *England* to the Votes 'of the Houſe of Commons.

It is Reſolved by the Lords Spiritual and Temporal in Parliament aſſembled. 'That the deterring Electors from proſe-

'cuting Actions in the ordinary Courſe of Law, when they are 'deprived of their Right of Voting, and Terrifying Attorneys, 'Solicitors, Counſellors, and Serjeants at Law from Soliciting, 'Proſecuting, and Pleading in ſuch Caſes, by Voting their ſo 'doing to be a Breach of Privilege of the Houſe of Commons, is 'a manifeſt aſſuming a Power to controul the Law, to hinder 'the Courſe of Juſtice, and ſubject the Property of *Engliſh* 'Men to the Arbitrary Votes of the Houſe of Commons.

Ordered, 'That the ſaid Reſolutions, together with the 'Report, be forth-with printed and publiſhed; and that the 'Lord-Keeper do ſend them to all the Sheriffs throughout all '*England* and *Wales*, to be by them communicated to all the 'reſpective Cities and Boroughs. This Order was made *Die* '*Lunæ*, 27. *Martii*, 1704.

Theſe were the Reſolutions of the Houſe of Peers, and for the Support thereof, their Lordſhips have been pleaſed to publiſh a Learned Argument, Intituled, *A Report of the Lords Committees appointed to draw up the State of the Caſe upon the Writ of Error lately depending in the Houſe of Peers, wherein* Matthew Aſhby *was Plaintiff, and* William White *and others Defendants;* which Report by their Lordſhip's ſaid Order, hath been tranſmitted to the Sheriffs of each County, and to the Mayors, Bailiffs, and other chief Officers of Cities, Boroughs, and Corporate Towns; and therein the Charge againſt the Commons is ſuch, as ſeems to call upon the whole Houſe, and upon every Member of that Honourable Aſſembly to Anſwer for themſelves, and to ſet forth the Reaſons that induced them to concur in paſſing ſuch Votes and Reſolutions: But the Houſe of Commons had no Opportunity ſo to do, the ſaid Report not being publiſhed till the Parliament was prorogued.

The following Reaſons which are at preſent remembred as thoſe that did prevail with very many Members, are here humbly offered to Conſideration.

And Firſt, They obſerved, That this was a *New Invention*, no ſuch Action as this, having been ever brought before by any Elector, ſince the Foundation of the *Engliſh* Government, and therefore ought not to receive any Favour or Countenance.

2*dly*, That they could not find either by Experience or by Hiſtory, that any Inconvenience had ever happen'd to the Publick, for want of ſuch an Action.

3*dly*, That this preſent Action upon the Caſe being *a new Device*; it could not be ſupported by any Precedent or Judgment of Law in *Weſtminſter-Hall*, but the Legality thereof muſt entirely depend upon the Authority of Reaſon regulated by our Conſtitution.

4*thly*, That the Reaſons and Arguments chiefly made uſe of, to ſupport this Action, were all founded upon a Suppoſition, That *notwithſtanding all Electors by reaſon of their Freeholds and Freedoms are entituled to a Legal Privilege of giving their Votes for Election of Members to ſerve in Parliament: Yet in caſe the Sheriffs, Mayors, or other chief Officers concerned in the Management of ſuch Elections, ſhall refuſe to receive and admit upon the Poll, the Votes which they ſhall offer at ſuch Elections: The Electors are thereby debarr'd of their Votes, and deprived of their Right of Voting; and for ſuch Default in the Officer, there is no Remedy to be had in the Houſe of Commons, or at leaſt not ſuch as is proper and adequate to the Nature of the Offence.* And from hence

It was concluded by the Lords, That this was the proper Remedy which the Plaintiff has purſued, and that the ſame was ſupported *by the Grounds and Principles of the Ancient Common Law of* England, whereof the chief Maxim inſiſted on was this, *That every Right muſt have a Remedy to ſupport and maintain it.*

Theſe were the main Points upon which the whole Controverſy between the two Houſes ſeem'd to depend; for *if the Electors are not by ſuch Default of the Officers debarr'd of their Votes,* or if for ſuch their Default, *there is a proper Remedy to be had in the Houſe of Commons.* There can be no pretence for ſetting up a *new Remedy for a Perſon that has ſuffer'd no wrong, or for ſetting up TWO Remedies and TWO Juriſdictions inconſiſtent with one another, when the Law of* England *requires but ONE, and has provided and eſtabliſh'd that One.*

Now that the Remedy which the Plaintiff has purſued was not a proper one, and that the Votes and Reſolutions of the Houſe of Commons were well grounded, will (we hope) appear from the following Conſiderations, by which they were induced to paſs the ſame.

1*ſt*, 'That all Matters of Parliament are cognizable there, 'and not elſewhere.

2*dly*, 'That the Right or Privilege of Voting, and the Qua-'lification of Perſons to give their Votes in the Election of

'Members to ſerve in the Houſe of Commons, is a Matter of 'Parliament, and therefore not cognizable elſewhere.

3*dly*, 'That when the Vote of any Elector is offered at the 'Election for any of the Candidates, as it was in the Caſe be-'fore us, for Sir *Thomas Lee* and *Simon Mayne*, Eſq; and the 'ſame is refuſed to be received and entred on the Poll by the 'proper Officer: The Elector is not thereby debarr'd of his 'Vote, or deprived of his Right of Voting, but for ſuch Default 'in the Officer there is a Remedy to be had in the Houſe of 'Commons, which is proper and adequate to the Nature of 'the Offence.

4*thly*, 'That the eſtabliſhing another Juriſdiction at Law, 'beſides that of the Houſe of Commons, to hear and de-'termine Controverſies between the Electors and Officers 'concerning the Right of Voting, or Qualification of Electors, 'to give their Votes in Election of Members to ſerve in Par-'liament, will expoſe all Mayors, Bailiffs, and other chief 'Officers (who are oblig'd to take the Poll, and make a Re-'turn thereupon) to Multiplicity of Actions, vexatious Suits, 'and unſupportable Expences, and will ſubject them to diffe-'rent and independent Juriſdictions, and inconſiſtent Deter-'minations, in the ſame Caſe without Relief; and will not 'be conſiſtent with the Conſtitution of Parliaments or the 'publick Safety.

Theſe were the Poſitions laid down by the *Members of the Houſe of Commons*, and if it can be proved, that they are grounded on *the Laws, Uſages and Cuſtoms of the High Court of Parliament, and even upon the Original Frame and Conſtitution of the Government:* And if there be any Weight in that famous Maxim, *Salus Populi ſuprema Lex;* then there will be no Occaſion of anſwering the Arguments for the Action, Paragraph by Paragraph; for if the Foundation of them happen to fail, the Superſtructure can never be ſupported, but the Action it ſelf, and the Reaſons given for it, muſt all give place together to a *Superior Law.*

The Firſt POSITION.

That all Matters of Parliament are cognizable there and not elſewhere.

This Poſition may be demonſtrated both by Authority, and by Reaſon.

1*ſt*, By

1*st*, By *Authority;*—And here it may not be improper to obſerve, in the words of my Lord Chief Juſtice *Coke*, in his fourth Inſtitutes, and his Chapter of Parliaments; 'That 'the King and the three Eſtates of the Realm, that is to ſay, 'the Lords Spiritual, the Lords Temporal, and the Knights, 'Citizens and Burgeſſes in Parliament aſſembled (whether 'they do ſit in one Houſe as formerly, or in two Houſes as 'at this day, do compoſe the great Body Politick of this 'Kingdom, and do conſtitute that Supreme Court call'd the 'High Court of Parliament.

'And as every Court of Juſtice hath Laws and Cuſtoms 'for its Directions, ſome by the Common Law, ſome by the 'Civil and Canon Law, and ſome by peculiar Laws and 'Cuſtoms, *&c.* ſo the High Court of Parliament (ſays *Coke*) '*ſuis propriis Legibus & conſuetudinibus ſubſiſtit*, hath Laws 'and Cuſtoms peculiar to it ſelf; and theſe Laws are not uſually ſtudied or underſtood by the common Lawyers in *Weſtminſter-Hall*, altho' they are Men of great Capacities, and of the moſt profound Learning in their own Profeſſion.

'Theſe Laws (ſays Judge *Coke*) which are the very Heart-'ſtrings of the Common-wealth, would take up a whole 'Volume of it ſelf; and to ſay the truth, the Laws, Cuſtoms, 'Liberties and Privileges of Parliament are better to be 'learn'd out of the Rolls of Parliament, and other Records, 'and by Precedents and continual Experience, than can be 'expreſs'd by any one Man's Pen; *Co.* 4. *Inſt. p.* 1. 14. '23. 49. 50.

And in another Place he ſays, 'It is to be known that the 'Lords in their Houſe have Power of Judicature, and the 'Commons in their Houſe have Power of Judicature, and 'both Houſes together have Power of Judicature; but the 'handling thereof, according to the Worth and Weight of the 'Matter would require a whole Treatiſe of it ſelf, and it is 'beſt to be underſtood by reading the Judgments and Records 'of Parliament at large, and the Journals of the Houſe of 'Lords and the Book of the Clerk of the Houſe of Commons, 'which is a Record, as it is affirm'd by Act of Parliament. '6. *H.* 8. *c.* 16. *Co.* 4. *Inſt. p.* 23.

And here my Lord *Coke* doth cite ſeveral Caſes where Judgment was given *by the Lords and Commons*, and where Judgment was given by the *Commons alone*, and the *Offenders fined and impriſon'd by the Commons according to the Law and Cuſtom of Parliament.* To all which, for brevity ſake, the Reader is referr'd, 4. *Inſtit.* 24.

And

And thus it may appear, that *the High Court of Parliament* hath Laws and Cuſtoms peculiar to it ſelf, and that the two Houſes have by thoſe Laws a Power of *Judicature* jointly and ſeparately according to the Nature and Reaſon of the Caſe before them; and altho' the Law and Cuſtom of Parliament is a part of the ancient Common Law of *England*, yet as this High Court is ſuperior to the Courts of *Weſtminſter-Hall*, ſo alſo is the Law of Parliament ſuperior to that part of the Common Law which is uſed there; and therefore all Matters which concern the Parliament, muſt be cognizable there and not elſewhere.

'The Judges (ſays Chief Juſtice *Coke*) ought not to give 'any Opinion of a Matter of Parliament, becauſe it is not 'to be decided by the Common Law (uſed in *Weſtminſter-Hall*) 'but *ſecundum Legem & Conſuetudinem Parliamenti*, by 'the Law and Cuſtom of Parliament; and when *Scrope* inſiſted in a Matter relating to Parliament, upon a Rule or Maxim of the Common Law, in Favour of the Crown, *That the King might ſue in what Court it pleaſeth him*, the words of the Law Book are, *But Matters of Parliament are not, as hath been often obſerved, to be ruled by the Common Law:* And when the Lords in Parliament have asked the Judges any thing concerning *the Courſe or Privilege of Parliament*, they have ever anſwer'd, *That they know not, nor can adviſe concerning them;* and as a learned Judge was pleaſed to argue, 'If we Judges do not know, nor can adviſe concerning theſe 'things, how can we judge People upon them out of Par-'liament; we ought to know before we judge, and therefore 'we cannot judge at all, of things we do not know.

By theſe and many other Authorities it may moſt evidently appear, that the Judges of the Courts in *Weſtminſter-Hall*, are not allow'd ſo much as to give their Opinion, much leſs to pronounce Judgment upon Record, in a matter of Parliament; neither are the Rules or Maxims of the Common Law uſed in *Weſtminſter-Hall*, even in the Caſe of the Crown it ſelf, and conſequently not in the Caſe of a private Subject, of any weight at all, againſt this ſuperior Law and Cuſtom of Parliament. But,

2*dly*, This Poſition is alſo to be demonſtrated from *the Nature and Reaſon of the Caſe:* For altho' Matters relating to an Inferior Court, may come regularly, by way of Appeal, to the Determination of a Superior; yet it was never known or heard, neither can it be conſiſtent with Rea-

ſon,

ſon, that an Inferior Court ſhould be admitted to judge of any matter, which concerns the very Being of a Superior; for that would be to ſubvert the order and courſe of Juſtice, which is obſerved in all Courts and Places whatſoever.

But this being a very plain point, and not diſputed in general Terms till we come to Particulars, I ſhall paſs it over, and come to the ſecond Poſition.

The Second POSITION.

That the Right or Privilege of Voting, and the Qualification of Perſons to give their Votes in Election of Members to ſerve in the Houſe of Commons is a matter of Parliament, and therefore not cognizable elſewhere.

This Poſition may be demonſtrated ſeveral ways.

1. From the original Frame and Conſtitution of the Government.

2. From a fundamental Rule and Maxim of the Law and Cuſtom of Parliament.

3. From a general Conceſſion of all Parties.

And, 4*thly*, *By the conſtant Uſage and Practice of the Houſe of Commons, and by the known Laws and Statutes of the Realm.*

And firſt, *From the Original Frame and Conſtitution of the Government.* For by this it is provided, and it is the nobleſt Privilege that any Subjects in the World enjoy, That *no Laws can be made, no Rights diminiſh'd or alter'd but by their Own Conſent*; ſuch is the Excellency of our Conſtitution, and by this we are preſerv'd *a free People.*

But the Commons of *England* being a numerous Body, not able (as the Lords are) to meet together in one Aſſembly to debate and reſolve concerning the *ardua & urgentia Negotia Regni*, are neceſſitated to elect *Repreſentatives* to meet, debate, and act for them, and to do all things requiſite for the publick Safety; as if *the Electors themſelves were there aſſembled in their proper Perſons.*

It muſt be therefore one of the principal fundamental Privileges belonging to the Commons of *England*, and without which they can never be ſecure, *To be ſole Judges of their own Rights, as Electors*; that is, to determine *who are, and who are not qualified to give their Votes in every ſuch Election*; for

if any others ſhould be admitted to judge thereof, they can never be ſecure of *a right Judgment*, or of being truly repreſented *by Perſons duly elected, and fit to be truſted with the Liberties of their Country.*

And all the Electors in *England* are as much concerned to take care that the Vote of a particular Elector be received and admitted, as he is himſelf, becauſe it may be every other Elector's Caſe, as well as his, and the Safety of all depends upon doing Juſtice to every one.

It is alſo as neceſſary for the Common Safety, That *Illegal Votes ſhould be rejected, as that Legal Votes ſhould be received;* and they can never be aſſured, That *the Right of Election ſhall be preſerved in the Legal Electors, and that Illegal Repreſentatives ſhall not be impoſed upon them,* unleſs they have the ſole Judicature thereof in their own Power; that is, unleſs they have the *ſole right of judging of the Privilege and Qualification of Electors in the beſt manner they are capable of judging of any other Matter, and that is, by their Repreſentatives in Parliament.*

And this is no more than what is uſual and common to all other free Bodies of Men whatſoever, *To be ſole Judges of all thoſe Rights and Privileges which are abſolutely neceſſary to make them free:* And when ever they can be perſwaded to give up this fundamental Privilege, they may readily ſurrender up all the reſt, which can by no other Means be ſecured to them.

They have indeed no Power over *the Prerogatives of the Crown*, or *the Rights of the Houſe of Peers*, without their Concurrence in Parliament; but as to their own particular *Rights* and *Privileges*, which are inherent in them by reaſon of their *Freeholds* and *Freedoms*, and which are abſolutely neceſſary to make them *a free Branch of the High Court of Parliament*, none can have the Judicature thereof, beſides their own Repreſentatives, whilſt they continue *a free People.*

There is a great difference to be obſerved between the Rights of the Commons of *England* in their *private* and in their *publick* Capacities; for tho' the private Differences of the *Commons* concerning their *Freeholds* and *Freedoms*, are ſubmitted to the Determination of the Judges of *Weſtminſter-Hall*, as Perſons indifferently choſen and appointed by the Prince, to do equal Juſtice to all his Subjects; yet they have never ſubmitted the fundamental Rights of the Commons of *England* in general, and in their publick and politick

Capacities as they are a free Branch of the High Court of Parliament, to the Determination of any other, but their own Repreſentatives.

And this ſort of *Judicature* being an original Right inherent in them by reaſon of their *Freeholds* and *Freedoms*, none can legally take it from them without their own Conſents, any more than they can take from them their Freeholds themſelves.

The Houſe of Peers do claim a Privilege of being ſole Judges of their own Rights, and of the Qualification of their own Members, and of all other Matters relating thereto, and neceſſary to their being Members of that Honourable Aſſembly, which is the great Privilege that makes them a free Branch of the High Court of Parliament. And the Houſe of Commons muſt either have the ſame Privilege with relation to their Members, and all things neceſſary to the Election and Qualification of them and their Electors, or elſe there cannot be a free Parliament; neither can the Commons be able to preſerve the Rights of the People, or the juſt Balance of the Conſtitution.

It muſt indeed be confeſs'd by all true Proteſtants, that there is no ſuch thing as Infallibility upon Earth, and therefore it is not impoſſible but the Houſe of Peers or Houſe of Commons may one time or other be miſtaken in their Judgments; but it is morally impoſſible that the Houſe of Commons can ever commit ſuch an Error as ſhall be fatal to the Conſtitution and the Liberties of the People; becauſe it cannot be imagin'd that *a free Parliament will deſtroy it ſelf*; But if any others ſhould be admitted to judge of the Rights of Electors, their Errors may be of fatal Conſequence to the People, becauſe they may not only be as fallible as the Commons, but all Men will be as naturally inclin'd to get the Power into their own Hands; as the Houſe of Commons will be to keep it in theirs, and conſequently in the Hands of their Electors.

And foraſmuch as the Power of judging who are qualified to Vote in Election of Members to ſerve in Parliament is *a greater Truſt* than any other committed to the Houſe of Commons, becauſe all the Rights and Liberties of the People do depend upon it; therefore it may be concluded, from *the very Frame and Nature of our Conſtitution*, that ſuch a Power muſt be lodged in *the Houſe of Commons*, and could not be intruſted with the Judges of the Courts in *Weſtminſter-Hall*,

becauſe they are not *Truſtees and Repreſentatives of the People.*

2*dly*, The ſame Poſition may be proved, from a fundamental Rule and Maxim of the Law and Cuſtom of Parliament, *That the Houſe of Lords and Houſe of Commons are independent of one another, and ſole Judges of their own Rights and Privileges.*

And herein lies the great Security of all the People of *England;* for if either *Houſe* were dependent on the other, there would be no need of *two Houſes*, but that *one* which had the Power over the other, would be ſufficient to do the Buſineſs of both, and would be able at any time to ſubject the People to an illegal and arbitrary Power; and if the Rights and Privileges of the *two Houſes*, or if either of them ſhould be ſubject to the Juriſdiction of an *Inferior Court* at Common Law, the whole Order and Courſe of Juſtice would be ſubverted, and there could be no ſuch thing as a *free Parliament.*

Since then it is allowed, that the Houſe of Commons are ſole Judges of their own Rights and Privileges, and *that the Rights and Privileges of the Electors and of the Elected are one and the ſame;* it muſt be evident that the ſole Judicature of *the Right of Voting* in every Election, being one of the fundamental Rights of *the Electors*, muſt be alſo one of thoſe Rights and Privileges belonging to *the Elected*, and of which *the Houſe of Commons are the ſole Judges by the Law and Cuſtom of Parliament.*

The Houſe of Commons are truly ſaid to be the whole People of *England in Epitome* contracted into a ſmall Body, not only for the Eaſe and Conveniency, but alſo for the Neceſſity of Government: They are *the Commons of England in Parliament aſſembled*, all the Power which by our Conſtitution is either granted or reſerved to the People for their common Security is delegated to, and appointed to be exerciſed by, their Repreſentatives in Parliament; and whatever is done by *the Elected* is in Conſideration of Law done by *the Electors;* for *qui per alium facit, per ſeipſum facere videtur;* and any Perſon may as well ſeparate the *Soul* from the *Body*, as the Intereſt of *the Electors* from that of *the Elected;* which in both caſes is preſent Deſtruction.

If therefore the Houſe of Commons have any Rights at all, they muſt certainly have that Right, which is abſolutely neceſſary for their own Preſervation; and without which they can never

never ſecure any other Right that belongs to them, or to thoſe to whom they are intruſted; and *if they have this Right, then they muſt be ſole Judges of it, by the Law and Cuſtom of Parliament.*

3*dly*, This Poſition may be alſo proved from a general Conceſſion of all Parties, *That the Right of Election of Members to ſerve in Parliament is ſolely determinable in the Houſe of Commons and not elſewhere;* but how the Right of Election can be ſeparated from the Right of Voting in that Election, is not eaſy to be imagined; when the Houſe of Commons determines that *the Right of Election* in ſuch a Borough is for inſtance, *in the Inhabitants paying Scot and Lot*, what is the meaning of that Determination, but that the Right of Voting is in ſuch Inhabitants? which is the ſame thing in other words, as the Right or Qualification of the Electors, which is the Matter in queſtion.

'If one be duly Elected (ſays Lord *Coke*) and the Sheriff 'returns another, the Return muſt be amended, and the 'Perſon duly Elected muſt be inſerted, for the Election in 'theſe Caſes is the Foundation and not the Return, *Co.* 4. *Inſt. p.* 49. And how is this Election made but by the Votes of the Electors? If then the Electors make the Election, and the Election is the Foundation, *the Right of Electors which lays that Foundation muſt needs be a principal Matter concerning the Parliament.* And as it would be ſtrange to to allege, that the Upper-Rooms do belong to a Houſe, and not the Lower by which they are ſupported; ſo it would be equally ſtrange, *That the Rights of the Elected ſhould concern the Parliament, and not the Rights of the Electors which are the Foundation of them.*

It is a fundamental Maxim in the Law of *England*, *Quando Lex aliquid concedit, concedit & id, ſine quo res ipſa eſſe non poteſt, When the Law grants a Power, it grants every thing that is neceſſary to ſupport that Power, or elſe* (in effect) *it grants nothing at all.* If therefore the Law has given the Houſe of Commons a Power to try the Right of Election, and they cannot try that Right, unleſs they have alſo a Power to try the Right of *the Electors*, then by this Maxim, the ſame Law that gave them a Juriſdiction to try the Right of one, gives them Authority to try the Right of the other; and if ſo, then no Authority, by our Conſtitution, ought to over-rule their Determination, or which is all one, to contradict it; and therefore the Commons muſt have *the ſole*

Judicature of the Rights of Electors, as being a Matter of Parliament and not cognizable elsewhere.

4*thly*, And *Lastly*, This Position may be farther proved from *the constant Usage and Practice of the House of Commons, and by the known Laws and Statutes of the Realm.*

The very first thing that is determined on the Trial of all Elections in the House of Commons, is *the Right of Election*, that is to say, *who are qualify'd to vote in the Election of Members to serve in Parliament for that Borough;* whether the Inhabitants at large, or those paying Scot and Lot, or a select Number, or those that hold by Burgage Tenure, *be the legal Electors;* and what is this, but *a Judicature of the Rights of the Electors*? And this Judicature has been held so necessary to preserve *free Parliaments*, that in the 7*th* and 8*th* Year of the late Reign of *King William*, of Glorious Memory, it is Enacted, 'That if any Person shall return a Member to serve in 'Parliament, contrary to the last Determination of the House 'of Commons, it shall be adjudged to be a false Return. What can more plainly demonstrate, That the Right of Voting, and the Qualification of Electors is a Matter of Parliament, and consequently not cognizable elsewhere?

The Lord Chief Justice *Coke* tells us, 'That after the 'Precept of the Sheriff directed to the City or Borough for 'making of Elections, there ought, *secundum Legem & Con-'suetudinem Parliamenti*, to be given a convenient time for 'the day of Election, and sufficient warning given to the 'Citizens and Burgesses that have Voices, that they may be 'present, otherwise the Election is not good, *Co.* 4. *Inst. p.* 49. By which it plainly appears, that the Right of Electors was a Matter of Parliament; and that the same was taken care of, by the Law of Parliament, and not by the Common Law.

And in the next Paragraph Judge *Coke* says, 'That any 'Election or Voices given before the Precept be read and 'published are void and of no force; for the same Electors 'after the Precept read and published, may make a new 'Election and alter their Voices; but by what Law? not 'by the Common Law, but as he there informs us, *by the 'Law and Custom of Parliament.*

And it appears by innumerable Precedents in the Journals of the House of Commons, that all Questions, with relation to the House of Commons, from the beginning of the Election to the end of the Session, 'As who shall be deem'd 'and taken to be legal Electors? Who shall take the Poll? 'Be-

'Between what Hours of the Day? What Notice ſhall be 'ſufficient to be given of the time of the Election? What free-'dom ſhall be allowed to Electors in giving their Votes; to 'the Sheriffs, Mayors, and other chief Officers in taking and 'entring thoſe Votes upon the Poll; to the Perſons Elected, 'in ſpeaking and acting freely for the Good of their Country? It is known that all theſe and the like Queſtions have been from time to time determined in the Houſe of Commons by *the Law and Cuſtom of Parliament*, and therefore *they are not cognizable elſewhere* except in caſes otherwiſe provided for by Act of Parliament.

The Common Law in *Weſtminſter-Hall* had nothing to do with theſe Matters of Parliament; the common Lawyers generally ſpeaking, unleſs ſome few Perſons, who had been Members, or had particularly ſtudied the Law of Parliaments, do not pretend to give any Advice or Opinion of Matters of this Nature; neither do they think it any Diſparagement to them to be unskill'd therein.

And whenever the Commons obſerv'd, that by *the Law and Cuſtom of Parliament*, the Rights of Electors was not ſufficiently ſecured, nor the Offenders againſt that Right ſufficiently puniſhed, tho' they would not ſuffer any new Device or Invention to be ſet up by inferior Judges, yet they have often contriv'd a farther Remedy by Authority of Parliament; as may appear by the ſeveral Statutes made 8 *H.* 6. cap. 7. — 10 *H.* 6. cap. 2. — 23 *H.* 6. cap. 15. — 7 *W.* 3. cap. 4. & 8 *W.* 3. cap. 7. — 7 & 8 *W.* 3. cap. 15. — 7 & 8 *W.* 3. cap. 25. — 10 & 11 *W.* 3. cap. 7.

And all thoſe Statutes may be brought to prove, that the Rights of the Electors and of the Elected are *Matters of Parliament*, and that the ſame were not cognizable elſewhere; for if they were, there had been no occaſion for all thoſe Statutes, but *the Electors* and *the Elected* might have recovered their full Damages at Common Law.

And thus with great Submiſſion it ſeems to be demonſtrated,

1ſt, *From the Original Frame and Conſtitution of the Government; That as all Legal Electors, by reaſon of their Freeholds and Freedoms, and for the Security thereof, are originally entituled to a Privilege of giving their Votes in the Election of their own Repreſentatives to ſerve in Parliament; by the very ſame Reaſon they muſt alſo have the ſole Right of judging and determining by thoſe Repreſentatives*

who are, and who are not qualify'd to give their Votes in every ſuch Election, or elſe they can have no manner of Security at all, nor can be in reality a free People.

2*dly*, That the Houſe of Commons by a fundamental Rule and Maxim of the Law and Cuſtom of Parliament, *are ſole Judges of their own Rights and Privileges;* and by conſequence of *the Rights and Privileges of all the Commons of* England; which (as far as is poſſible) are delegated to them as their Repreſentatives: And it being neceſſary for *the Electors* to have the ſole Power, to determine ſome way or other, who are duly qualify'd to Vote in all Elections, and *the Elected* being intruſted with all their Rights and Privileges, they muſt have this alſo amongſt the reſt, and *be the ſole and proper Judges in the Caſe before us.*

3*dly*, That the Right of Election is ſolely determinable in the Houſe of Commons, and the Rights of the Electors being the Foundation of the Rights of the Elected, and neceſſary to the very Being and Eſſence of a free Parliament, is therefore *a principal Matter concerning the Parliament* and *conſequently not cognizable elſewhere.*

And, 4*thly*, The ſame Poſition is proved by the conſtant Uſage and Practice of Parliament, and by the known Laws and Statutes of the Realm, as hath been demonſtrated.—I come now to

The Third POSITION.

That when the Vote of an Elector is pronounced and offered at an Election for any of the Candidates (as it was in the Caſe before us, for Sir Tho. Lee, *and* S. Mayne *Eſq*; *and the ſame is not received and admitted on the Poll by the proper Officer; the Elector, the Plaintiff, is not thereby debarred of his Vote, and conſequently is not entituled to an Action at Law for Recovery of Damages; but for ſuch Default in the Officer, there is a Remedy to be had in the Houſe of Commons which is proper and adequate to the Nature of the Offence.*

To make this Poſition plain and evident to the meaneſt Capacity, it may not be improper to conſider,

1*ſt*, 'The Nature of the Right or Privilege of Voting 'claimed by the Elector:

2*dly*, 'The Nature of the Wrong or Offence committed by 'the Officer; and,

3d

3dly, 'The Nature of the Remedy which is given in such caſes by the Houſe of Commons; and then,

4thly, 'To demonſtrate that this Remedy is proper and adequate to the Nature of the Offence.

And firſt, *As to the Nature of the Right*; it was obſerved in the Houſe of Commons, that there are ſeveral ſorts of *Rights* in Conſideration of Law;

There are Rights of *Property* and Rights of *Privilege*; and of *Privileges*, ſome are attended with a private Profit, and ſome are not; of thoſe that are not, ſome are perſonal Privileges, that no ways concern the Publick, nor have any other End, but the Eaſe or Pleaſure of a particular Perſon; and others are of a publick Nature, and are not granted to a particular Perſon for his own private Advantage, but for the general Good of that Kingdom or Commonwealth of which he is a Member; and ſuch Privileges being granted to particular Perſons for the good of all, and only as a means to attain ſome publick Good. The whole Community are chiefly concerned for the Preſervation of ſuch Rights, as that on which the common Safety doth depend.

And ſuch a Right as this they did apprehend *the Privilege of Voting in Elections to be.* It is not a Right of *Property*, or of *Privilege*, attended with any particular Profit, or for a private End; but it is *a Liberty or Privilege*, which every Legal Freeholder, Citizen, and Burgeſs have by reaſon of their Freeholds and Freedoms, to this end only, that they may all be truly repreſented in Parliament, by Perſons duly elected and fit to be truſted with the Liberties of their Country.

This is the *Principal Right* of all Electors, and the *Privilege of Voting* is only a means to preſerve that Right; and it is ſo far from being attended with any particular or private Profit, abſtracted from this publick Conſideration, that it was always eſteem'd by our Anceſtors, to be *a Charge and Burthen*, which Electors were oblig'd to undergo for their common Security.

And this will appear more plain and evident, if we look back and conſider the Original Inſtitution of Parliaments; for in the Beginning, the Repreſentatives were Elected to *ſerve* their Country, and for ſuch their *Service*, they were to receive *Wages* from their Reſpective Electors; by which it may appear, that the Privilege of the Elected was eſteem'd a

Service, and the Privilege of the Electors *a Charge and Bur-then*; From which in former times, many of them did desire to be excuſed by reaſon of their Poverty.

And although it may be a commendable thing, that Gentlemen of Eſtates and Qualities, are now willing to serve their Countries, at their own Expence; Yet this may shew the Nature of the Conſtitution, and how far our Anceſtors were from thinking this to be *a Right of Property or Privilege that was attended with any perſonal Profit, or ought to to be repaired with any Damages to the Party.*

But as there are ſeveral *ſorts of Rights and Privileges* ſo there are alſo ſeveral *ſorts of Laws and Courts*, appointed for the Preſervation and Security of them. Some Rights are ſecured by *Common Law*, ſome by the *Canon or Civil Law*, and ſome by the *Law and Cuſtom of Parliament*. And as the *Law* varies, ſo does the *Remedy*. Thoſe Arguments which would be very proper to be uſed in Actions for Recovery of Damages at Common Law, might perhaps be unreaſonable in their own Nature, to be offer'd for Recovery of Damages for Non-payment of a Legacy in the Spiritual Court; for *whoever denies to pay a Legacy that is bequeathed to another, does ill, that is certain: And then if the Law does not allow an Action to the Party injured, it tolerates the Injury, which is abſurd to ſay is tolerable in any Government.* And yet this plauſible Argument is of no Weight at all in this Caſe, becauſe this Right is ſecur'd in another Court and by another Law; and the Remedy in that Court being approved for time immemorial, no Man ſhall be admitted to argue from *the Grounds and Principles of the Ancient Common Law of* England, that thoſe Remedies which are uſed *in the Spiritual Court*, are not proper and adequate to the Nature of the Offence.

In like manner, the Right or Privilege of Voting in Elections of Members to ſerve in the Houſe of Commons being a Matter of Parliament, and not cognizable elſewhere, no Perſon may be allow'd to argue upon any Default in the Officer, what ſort of Remedy is proper and adequate to the Nature of the Offence from the Reaſon of *that part of the Common Law*, which is uſed in *Weſtminſter-Hall*, but from the Reaſon of another part thereof, which is called *the Law and Cuſtom of Parliament*; which two Laws do often differ from one another, as the Intereſt of a private Perſon happens to differ from the Intereſt of the Publick.

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And thus having ſet forth the Nature of the Right or Privilege of Voting in Elections, I proceed in the next place, to conſider the Nature of the Wrong.

2*dly*, As to *the Nature of the Wrong or Offence committed by the Officer, in refuſing to receive and admit on the Poll, the Vote of a Legal Elector, which he had offered and declared at the Election.*

It may be obſerved 1*ſt*, That the Defendants did not by Force of Arms drive the Plaintiff away from the Election, nor by Menaces deter him; but they did not think fit *to receive and admit his Vote on the Poll*; Becauſe they did apprehend, to the beſt of their Judgments, that he was not a ſettled Inhabitant in *Aleſbury*, but a poor Oſtler, that ſhifted about for a Livelihood. And in caſe they had admitted his Vote, and the Election had happened to turn upon it, and upon a Diſpute in Parliament the Plaintiff had appeared to be no Legal Elector, they had incurr'd a Penalty of 500 *l.* upon the Statute for a falſe Return; therefore they thought it the moſt ſafe and prudent way not to receive his Vote; and this is the Nature of the Offence, it was not an Act done, but omitted to be done: not with an Intent to do a Wrong to the Plaintiff, but for fear of doing Wrong to the Candidates, and of incurring a Penalty, and alſo of acting againſt their own Oaths and Judgments.

2*dly*, It may be obſerved, That in all Elections there is a Neceſſity that ſome Perſons or other ſhould be intruſted with the Management thereof, That *neither Legal Votes ſhould be refuſed, nor Illegal Votes received*, both which are equally prejudicial to the Rights of Electors.

3*dly*, That the Management of ſuch Elections is wiſely intruſted by our Conſtitution to the Sheriffs, Mayors and other chief Officers, who are generally Men of the beſt Eſteem and Credit in their Countries, and *are upon their Oaths truly and faithfully to execute their Offices, to do Right as well to Poor as Rich, and to do Wrong to no Man.*

4*thly*, That the ſaid chief Officers are oblig'd not only by their Oaths, but alſo at the Peril of a great Penalty of 500 *l.* for a falſe Return, to take care that they do neither refuſe any *Legal* Vote, or accept any *Illegal* one, but that they do equal Juſtice to all Parties, according to the beſt of their Judgments.

5thly, That it would be highly unreaſonable to require Officers upon their Oaths, and under a great Penalty, to return Members duly elected by Majority of Legal Votes, and at the ſame time not give them the leaſt Liberty to judge of that Majority, or who are legally qualified to give their Votes in ſuch Election.

6thly, That therefore the ſaid Officers, tho' *Miniſterial* in other Reſpects, yet in this Particular they do all act in *a Judicial Capacity*; and the Nature of the Wrong is the ſame in this Caſe, as it is in any Judge of *Weſtminſter-Hall*, that is miſtaken in his Judgment: And no ſuch Error will entitle the Parties injur'd to an Action at Law, altho' it ſhould be laid *falſo malitioſe & ſcienter*: For ſays Lord *Coke* 12 *Rep. fo.* 24. *They who are intruſted to judge, ought to be free from Vexation, that they may determine without fear; the Law requires Courage in a Judge; and therefore provides Security for the Support of that Courage;* and no other Judge has need of more Courage and Reſolution to manage himſelf, and determine uprightly, than theſe chief Officers have; nor no other Judge determines in a Caſe of greater Conſequence to the Publick, or of greater Difficulty in it ſelf: for as a very Learned *Judge* obſerves, this Queſtion of *Majority* is not a Queſtion of *Fact*, but a Queſtion of *Judgment*; *a Queſtion of very difficult Judgment*, there are ſo many Qualifications of Electors.

1*ſt*, *They muſt have* 40 *s. per Annum*: There the Value muſt be judged.

2*dly*, *It muſt be Freehold*: There the Title.

3*dly*, *It muſt be their own*: There colourable and fraudulent Gifts, made many times on purpoſe to get Voices, muſt be judged.

4*thly*, *The Electors muſt be reſident*: There the Settlement of the Party muſt be determined.

5*thly*, *There are many things that incapacitate Voices*, as *Bribery*, *Force*, &c. and many other Queſtions ariſe that are of ſuch Difficulty, that in the Debate of them much time is ſpent in Parliament, and ſometimes the Committee determine one way and the Houſe another; *Is not this a Queſtion then that refers to Judgment*? Certainly it is, and therefore that Upright Judge concluded very well; *If we Judges* (ſays he) *that find our ſelves ſecure from Actions, ſhould not be tender of others that are in the ſame Circumſtances*, it may well be ſaid, *Wo unto you, for you impoſe heavy Burthens upon others, but will not bear the leaſt of them your ſelves.* 6*thly*,

6thly, It may be obſerv'd, That the Elector (the Plaintiff) was not by ſuch Omiſſion or Default in the Defendants, depriv'd of his Right or Privilege of giving his Vote, as hath been ſuggeſted; for ſince he was admitted to come to the Place of Election, and was there ready, and actually offer'd and pronounced his Vote for Sir *Thomas Lee* and *Simon Mayne*, Eſq; and the Defendants were required to receive and admit the ſame, as is alleg'd in the Declaration; his Vote was as good and valid, and as well given on his part, by the Law and Cuſtom of Parliament, by being thus offered and declared, as if it had been received and admitted on the Poll, and is ſo adjudged in the Determination of all Elections by the Houſe of Commons, and conſequently the Plaintiff could not be entituled to Damages for the Loſs of his Vote, of which he was not deprived.

And thus it may appear, That neither the Right of the Elector, nor the Offence of the Officer, was of ſuch a Nature, as could entitle the Plaintiff to an Action at Law for Recovery of Damages. I ſhall now proceed to the third thing propoſed, which was to conſider,

3dly, The Nature of the Remedy which is given in ſuch caſes by the Houſe of Commons: And for the better underſtanding thereof I ſhall crave leave to obſerve,

1*ſt*, That a Petition being exhibited to the Houſe of Commons by any Perſon or Perſons whatſoever, concerned in any Election, ſetting forth *That a certain Perſon returned to ſit in Parliament, was not duly Elected by a Majority of Legal Votes, and complaining of undue Practices in the chief Officers, and praying ſuch Relief therein, as to that Honourable Houſe ſhall ſeem juſt and equitable*; The Houſe doth thereupon refer the Examination of the Petition, to *the Committee for Privileges and Elections*, who do not ſit at the ſame time with the Houſe, and can therefore give little or no obſtruction to their Proceedings, as hath been objected.

2*dly*, The ſaid Committee do thereupon meet at the time appointed by the Houſe, and having choſe a Chair-man, and read the Petition, the thing that is generally firſt conſidered, is, as hath been obſerved, *the Right of Election*; and this is either agreed by both Parties, or conteſted; if conteſted, it is argued by Council, and doth frequently occaſion long Debates, on ſeveral Points of Law; which is a Demonſtration from the conſtant Uſage, that the Houſe of Com-

mons are the proper Judges in this caſe, and that the Officers have occaſion to exerciſe their Judgments with great Caution in the Management of Elections; but this Point being ſettled, and a Copy of the Poll deliver'd in and proved,

3*dly*, They proceed to the Examination of Witneſſes and other Evidences relating to the Cauſe in Queſtion; and here it muſt be acknowleg'd, that the Commons do not either in the *Committee* or in the *Houſe*, adminiſter an Oath to any Witneſs, which yet is no Diſhonour to them, or Derogation from their Authority, as ſeems to be ſuggeſted; but on the contrary, it is a ſure Mark of their Antiquity, and of the great Veneration our Anceſtors had for that Auguſt Aſſembly; and it is alſo a Demonſtration of the great Authority of that Houſe, who alone have Power to puniſh Witneſſes, that without the Obligation of an Oath ſhall deny or conceal the Truth upon their Examination before them.

It may be alſo obſerved, that as Juries are to conſiſt of Perſons of the Voiſinage, becauſe they are ſuppoſed to be conuſant of the Fact of which they are to give their Verdict; ſo here the Houſe of Commons may be preſumed to be conuſant of the Facts and of the Veracity and Credibility of the Witneſſes, becauſe *the whole People of* England *are vertually preſent:* And if their not examining upon Oath were really an Objection to their determining the Right of Electors, how can they ever paſs any Bill of Property, and much leſs of Attainder, with any Juſtice; for in none of theſe caſes do they examine Witneſſes upon Oath; and if it ſhould be objected, that the Houſe of Commons are not upon Oath as Judges and Juries are, which is the more ſpecious Objection of the two; let it be conſider'd, that the Lords themſelves are not upon Oath in all their Judgments.

4*thly*, When the caſe hath been fully and fairly heard, and the Council, Parties, and Witneſſes are withdrawn, and after a ſolemn Debate amongſt themſelves upon any difficult point, the Committee come to ſome Reſolutions, which they direct their Chair-man to report to the Houſe for their Approbation, and in the Determination of every Election, the following Rules and Methods are obſerved.

1*ſt*, Every Legal Vote which was offer'd at the Election (as the Plaintiff's was) is upon Proof thereof, admitted and allowed to be as good a Vote, and as well given, as if the ſame had been received and admitted on the Poll by the proper Officer.

And this is the Reaſon why no ſingle Elector was ever known to petition the Houſe of Commons for Remedy againſt the Officer, that would not receive and admit his Vote, upon the Poll, becauſe the Elector is not thereby debarr'd of his Vote.

And for the ſame Reaſon the Commons do never adjudge that ſuch an Elector ſhall be reſtored to his Vote; but they take it for a ſtanding Maxim of *the Law and Cuſtom of Parliament* (which needs no Confirmation nor any Reſolution of the Committee, or of the Houſe) That *every ſuch Vote is as good in ſubſtance, as it could be if it had been received and admitted on the Poll:* And this is demonſtrated, for that,

2*dly*, The Perſon who hath the Majority of Legal Votes, *tho' that Majority conſiſts in ſuch rejected Votes*, is declared and adjudged to be duly Elected a Member to ſerve in Parliament; and the Perſon returned, who had the *Majority without thoſe Votes*, is declared not duly Elected, and the Clerk of the Crown is order'd to amend the Return accordingly.

By which it evidently appears, that all thoſe legal Votes, which were offer'd and refuſed, were good Votes, and well given, at the time of the Election; or elſe all thoſe Determinations of the Houſe of Commons would be very unreaſonable and unjuſt: But ſince the Votes that are offer'd and refuſed, are as good Votes as thoſe that are offered and received, theſe Reſolutions of the Houſe of Commons are very juſt and reaſonable; and the conſtant Determination of Parliament muſt either be condemned by an inferior Court, which is abſurd; or elſe it muſt be allowed that the Plaintiff was not debarr'd of his Vote, and by conſequence had no good Cauſe of Action for Recovery of Damages.

And when the Plaintiff lays down the Matters of Fact in his Declaration, and then draws a wrong Concluſion from the Premiſes, he ſhall not receive any Advantage from his own Miſtake and Miſrepreſentation; for it is evident from his own Confeſſion, *That the Plaintiff having offer'd his Vote for Sir* T. L. *and* S. M. *was not hindered from giving his Vote, to his Damage,* &c. as in the Declaration.

And here by the way it may be obſerv'd, how neceſſary it is for the common Safety, that the *Houſe of Commons* ſhould be ſole Judges of the Rights of *the Electors* as well as of *the Elected;* for otherwiſe their Authority would not be ſufficient to anſwer the end for which it was eſtabliſh'd, which was not only to find fault with the Officers, but to give the

Petitioner Relief, and fill their Houſe with Legal Repreſentatives.

The receiving and admitting the Votes of Electors upon the Poll, is only a Method or Means appointed to be obſerved by the Officers for the better Management of Elections, that no Miſtake may happen, nor any Miſmanagement be excus'd, but that every Default or Partiality in the Officers may be more eaſily detected and puniſh'd: But the Officers Duty is not made a qualification for every Vote, which is neither better nor worſe for that Formality; for neither doth the receiving and admitting, make a bad Vote good; nor the refuſing and rejecting make a good Vote bad; but the Law of Parliament determines the Caſe, according to the Majority of Legal Votes at the time of the Election, whether they were received or not.

This receiving of Votes on the Poll is a Formality that was not *annexed to the Elector's Freeholds and Freedoms, neither is it inherent in their Perſons by Reaſon thereof;* but it is a Duty impos'd upon the Officer by the Law and Cuſtom of Parliament, long after the original Inſtitution of the Rights of Electors; and therefore it would be highly unreaſonable that *the Electors* ſhould ſuffer by a Law *ex poſt facto,* which was not made *for the Deſtruction, but Security of their Rights.*

But altho' there is no particular Injury done to any Elector in this caſe, yet to all the Electors there is, and to their Repreſentatives: For, 1*ſt*, The Officers are diſobedient to the Order of the high Court of Parliament, whereby they are directed to do Juſtice to all the Electors, and neither to receive the Votes of thoſe that are not qualify'd, nor reject the Votes of thoſe that are; and for default in either of thoſe caſes, every Elector is as much concern'd as any one, and as much entituled to an Action, and to a proper and adequate Remedy for Redreſs thereof, becauſe they are all equally concerned to have true Repreſentatives; but for the Reaſons aforeſaid, as well as for the Reaſons in *Williams*'s Caſe againſt Multiplicity of Actions, none will lye in this Caſe, neither is there any Remedy for any one, but for all the Electors.

2*dly*, By this means it may ſo happen, that the Commons of *England*, and their Repreſentatives in Parliament aſſembled, may, for ſome time, be deprived of one or more Legal Members to aſſiſt them with their Counſel in the great and urgent Affairs of the Kingdom; (for the Election may hap-

happen to turn upon thoſe very Votes) and then they muſt alſo labour under all the Inconveniencies, that may happen to themſelves and to the Nation, by having other Members in the mean time to ſit in Parliament, who coming in by undue Practices, may be inſtrumental in miſguiding and perplexing the Debates of the Houſe to the general Diſadvantage of the Prince and People. And thus it may appear that the default of the Officer is not an Offence to the *Party*, but to the *Parliament*, and to the whole Kingdom; and therefore,

3dly, It is Eſtabliſh'd by the Law and Cuſtom of Parliament, that *all Sheriffs, Mayors, Bailiffs, and other Chief Officers* (concerned in the Management of Elections of Members to ſerve in Parliament, and who in that reſpect are the Officers of the Parliament) *that ſhall be guilty of any Neglect, or undue Practice in the Diſcharge of their Duty, are puniſhable by the Houſe of Commons, by Impriſonment*, &c. *and not elſewhere*: Which Puniſhment may be inflicted upon them, upon the Information of, and upon Proof made, by any Elector or Electors whatſoever, whether their Votes were refuſed or received.

This Law is founded upon great Reaſon, and even upon a Neceſſity of preſerving thereby, the Conſtitution of Parliaments; for if the *Commons* wanted Power to puniſh thoſe Officers, or in caſe any other had Power ſo to do, beſides themſelves, in caſes relating to Elections, they could never be ſecure of fair Returns, or of a free Parliament.

Beſides, it will be diſhonourable to Parliaments, as a learned Judge obſerves, that *there ſhould be no protection in their Service; no Body can ſerve them chearfully and willingly at that rate; and to have others judge when their Servants do well or ill, will be to have others give Rules to their Servants and Service, which will not be convenient*; and that theſe Officers do act in this particular Service, as the Officers of Parliament, may appear, becauſe the Parliament does exerciſe an immediate Juriſdiction over them in all thoſe caſes. The Court of *Chancery* is indeed the Repoſitory for the Writs, but that Court does not meddle with the Returns or the Sheriff, nor iſſue out a new Writ, but by Warrant from the Speaker; and if the Return be too ſlow, the Parliament ſends an immediate Order to the Sheriff; or if faulty, takes him into Cuſtody, as for a Breach of the Privilege or Service of that Houſe; and thus if they act as their Officers, the Houſe of Commons alone muſt be the proper Judges of their

Behaviour; ſo that it appears both by *Reaſon, and by the Law and Uſage of the Parliament*, that the Houſe of Commons are ſole Judges of the good or ill Behaviour of Sheriffs and other publick Officers, in the Management of Elections of their own Members.

And thus having conſidered not only the Nature of the Right of the Elector, and of the Offence in the Officer, but alſo of the Remedy which is given in ſuch caſes by the Houſe of Commons; I proceed,

4thly, *To demonſtrate that this Remedy is very proper and adequate to the Nature of the Offence;* (that is) it is very juſt and equal, adapted to the Nature of the Offence, moſt likely to prevent Evil thereof, and moſt advantageous for the publick Safety.

But, 1*ſt*, I crave leave to obſerve, that the Plaintiff's Action at Law is a Remedy that hath none of theſe Qualities; for it is not juſt and equal that the Officer ſhould pay Damage to one that has not ſuffer'd any; neither is it proper that a publick Offence ſhould be puniſhed by a private Satisfaction; which is neither likely to prevent the Evil thereof, nor is indeed conſiſtent with the publick Safety.

The Offence is not to the *Party*, but to the *Parliament*, and of the greateſt Conſequence to the Publick, whoſe ſafety depends upon fair Elections and free Parliaments; *How then can any private Damages to the Party, be a proper and adequate Remedy to the Nature of the Offence, to repair the Injury to the Publick, or prevent the Inconvenience?*

Such Defaults in the Officers are either Miſtakes and Errors in Judgment, which ought not to be determined by a common Jury; or elſe they are notorious and wilful Corruptions too big for an Action at Law, and only to be remedied by Authority of Parliament.

And if you reſpect the Right of the Elector, it is of ſuch a Nature, ſo *inherent in his Perſon, by Reaſon of his Freehold or Freedom, that no Omiſſion or Default of the Officer ought to be ſuffered to deſtroy it;* and therefore, this Action that is purſued by the Plaintiff upon the Grounds of the Common Law, and ſuppoſes him to be debarred of his Vote, is a Remedy that is worſe than the Diſeaſe; for certainly that Law that *preſerves* a Right, is better for the Subject, than that Law that firſt ſuffers it to be taken away, and then puts him to a great Expence and Trouble to recover it again, or to be repaired in Damages.

Neither

Neither doth this Action afford any Relief at all for that which is the principal Right of the Elector, *to be truly repreſented in Parliament;* ſo that in all Reſpects, the Action at Law is no proper Remedy.

But on the other ſide, the Remedy appointed in Parliament is every way proper and adequate, both *with reſpect to the Nature of the Right, and the Nature of the Wrong;* for by the Determination of the Houſe of Commons, *the Right of the Elector in point of Voting, is fully preſerved, notwithſtanding the Omiſſion and Default of the Officer: And the principal Right of being truly repreſented in Parliament, is alſo ſecured in that Determination; and by the ſame means, there is Juſtice done to all the Electors, both of that particular Place and of the whole Kingdom: Not only by paſſing a right Judgment for the Legal Repreſentatives, but alſo by puniſhing the Officers for any undue Practice.*

This is a Remedy that is juſt and equal to all Parties, adapted to the Nature of the Offence, moſt likely to prevent the Evil thereof, and moſt advantageous for the publick Safety.

Our wiſe Anceſtors in the Settlement of this Remedy, did not confine their Thoughts to the Reaſon of the Common Law, in private Cauſes of *Meum* and *Tuum* in *Weſtminſter-Hall,* but extending their Care to the Welfare of the Publick, did eſtabliſh their Concluſion upon the noble Foundation of Government, and upon the general Good of the whole Kingdom.

They wiſely conſidered the Nature of this Privilege belonging to the Electors, and the end for which it was eſtabliſhed, which was not for any private Advantage, but for the common Safety; and therefore having their Eyes fixed on the Liberties of their Country, and the Conſtitution of Parliaments, they apply'd ſuch a Remedy, as was every way adapted to the Preſervation of them.

By an Action at Law for Recovery of Damages, one Elector would have a Remedy to the Deſtruction of all the reſt, as ſhall be demonſtrated; but by this Determination in Parliament, every Elector both rich and poor, will have their Rights effectually ſecur'd to them.

The Vote of a ſingle Elector join'd with others, will either carry the Election, or it will not: If not, he ſuffers no real Damage in any reſpect, for his Vote is allow'd in Law, and he is repreſented by Legal Repreſentatives; if it will, and the

Candidates for whom he offered his Vote, are not returned, then he may have Juſtice done him in manner aforeſaid, and (which is a thing worthy of every Elector's Conſideration) *at the Expence of the Candidates:* But in caſe they are returned, then he has no Wrong done him, for the Reaſons aforeſaid.

And what other Remedy could be more proper and adequate to the Nature of this Caſe? For hereby the Right of every Elector is moſt effectually ſecur'd, *If the Elector offers his Vote, the Law takes it, tho' the Officer ſhould be wanting in his Duty:* And the Wrong is moſt effectually puniſhed by taking the Officers into Cuſtody, and expelling the Members that came in by Undue Practices.

But when the Inconveniencies of ſuch an Action at Common Law, and the Conveniencies and Advantages of this Remedy in Parliament, ſhall be fully ſtated and conſider'd, it will appear very difficult, how to find out a Remedy more deſtructive, than the former, or more advantageous than the latter to the Conſtitution of Parliaments, or the publick Safety; for,

It is a *Free Parliament* that is the Great Bulwark of the Liberties of *England*, and this will be effectually ſecur'd by the Determination of the Houſe of Commons, and renderd impracticable by Actions at Law.

A free Parliament depends upon *Free Elections*, but no Elections can be *free*, if there be any *Terrour* on the Electors, or on the *Officers;* for as the Electors muſt not be hinder'd by Force or Threatnings, but muſt be *free* to come to the Election, and to offer or pronounce their Votes to the proper Officer, for which of the Candidates they pleaſe; ſo the Officer muſt not be terrify'd with *fear of a Multiplicity of Vexatious Suits*, but muſt be *free* to act indifferently, as *a Judge*, in the Management of ſuch Elections, according to his *Oath* and Duty of his Truſt, and as well to reject the *bad* Votes as to receive the *good*; and ought not to be accountable to any, but to thoſe, whoſe Officers they are, and with whom are intruſted the Rights and Liberties of all the Commons of *England*.

And thus I humbly hope it is demonſtrated, That *the Remedy in the Houſe of Commons is very proper and adequate to the Nature of the Offence.* I proceed therefore to the next Poſition.

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The Fourth POSITION.

That the eſtabliſhing another Juriſdiction, beſides that of the Houſe of Commons, to hear and determine Controverſies between the Electors and Officers, concerning the Right of Voting, or the Qualification of Electors to give their Votes in the Election of Members to ſerve in Parliament, will expoſe all Mayors, Bailiffs, and other chief Officers to Multiplicity of Actions, Vexatious Suits, and unſupportable Expences, and will ſubject them to different and independent Juriſdictions, and inconſiſtent Determinations in the ſame Caſe, without Relief; and upon the whole Matter, will not be conſiſtent with the Conſtitution of Parliaments, or the publick Safety.

This Poſition hath been in a great Meaſure proved on ſeveral Occaſions, in the precedent part of this Diſcourſe, but the ſame may more fully and plainly appear by the following Obſervations.

1*ſt*, All Mayors, Bailiffs and other chief Officers, will either for fear of theſe kind of Actions at Law, *admit all Perſons*, who ſhall upon any Pretence or Colour whatſoever, offer their Votes at any Election, tho' they have in Reality no Right of Voting at all, or elſe *they will refuſe them;* if they *admit them*, they will ſubject themſelves to Actions on the Statute for a falſe Return, and to a Penalty of 500 *l.* If they *refuſe them*, they will be in Danger of being ruined by a Multitude of Actions for ſuch Refuſal; for all theſe Actions muſt be defended, tho' wrongfully and unjuſtly proſecuted, at the ſingle Expence of ſuch reſpective Officers: So that there is no Safety for theſe chief Officers, *Whether they admit or refuſe Illegal Votes; whether they do their Duty, or do not, it is the ſame thing, they cannot be ſafe, nor free from Multiplicity of Actions, Vexatious Suits, and unſupportable Expences, to the utter Ruine of them and their Families;* And is this conſiſtent with the Conſtitution of a well order'd Government, or the publick Safety? But

2*dly*, Upon every conteſted Election, the Commons do firſt declare the Right of Election, as hath been ſet forth, which the chief Officer hath either obſerved, or not; if he doth, *he is ſafe in Parliament, but not at Law;* for no Jury upon their Oaths are bound to find the Right of Voting, otherwiſe than appears to them by the Evidence that happens to be given at the Tryal; if the Jury find the

Right of Election to be in other Perſons than is declared in Parliament, then *is the Officer acquitted by the Houſe of Commons*, which is the Supream Court in ſuch Caſes, and *condemn'd by a Court of an inferior Nature*; And is it reaſonable to ſubject the Officers to *different and inconſiſtent Determinations in the ſame Caſe*? Can a Man be *Guilty and Innocent at the ſame time*? Is it conſiſtent with *the Order and Courſe of Juſtice*, or with the *Honour and Wiſdom of the Government*, or with *the Dignity of Parliaments, that an Inferior Court ſhould thus contradict a Superior in the ſame particular Inſtance*? But

3*dly*, Suppoſe the chief Officer hath not obſerv'd the Right of Election, but hath rejected ſeveral Votes of Perſons duly qualified, and thereupon the chief Officer is committed to the Cuſtody of the Serjeant at Arms, attending the Houſe of Commons; which Confinement, with the Fees attending it, hath been thought in moſt Caſes a ſufficient Puniſhment; yet notwithſtanding he hath been once ſufficiently puniſhed for this Offence, he, by ſuch a Precedent as would be eſtabliſhed by this Action, may be puniſhed over again by as many Actions, Verdicts, Judgments, and Writs of Execution for Damages, as there were Legal Electors whoſe Votes were rejected by him; And *is this conſiſtent with the Privileges of Engliſh Men*? *With* Magna Charta, *or with the Bill of Rights*? *And with the Fundamental Maxim of the Common Law of* England, *that no Man ſhall be twice puniſhed for the ſame Offence*? *Nemo bis punitur pro eodem delicto.*

4*thly*, *It is agreed by both Houſes of Parliament, That the Lords and Commons are independent of one another, and ſole Judges of their own Privileges*; but if ſuch Actions can be brought at Law, they may all as well as this, be removed by Writ of Error into the *Houſe of Peers*, and not only the Officers made ſubject to two different and independent Juriſdictions and Determinations in the ſame Caſe, which is abſurd; but *the Commons themſelves by degrees might be made precarious and dependent on the Power of the Lords*; for if a *Free Parliament* depends on *Free Elections*, and *Free Elections* upon the *Officers*; and if the *Officers* can have no Safety or Protection from the Commons, *whether they accept or refuſe Votes, whether they do well or ill*, but muſt at laſt be brought to the final Judgment of the *Houſe of Peers*, it will not be difficult to determine which way the Officers will be inclined for their own Security, tho' it be to the Ruine of the Conſtitution.

'If a Sheriff (or other chief Officer, ſaith a learned Judge) 'be thus liable to Actions at Common Law, let us conſider 'what and whom he is to fear; he may fear the Suit of the 'Party, and he may fear the Suit of the King: it follows ne-'ceſſarily, that if an Action lies, an Information for the King 'will alſo lie for the Miſdemeanour of his Office, if it be not 'a Caſe priviledged by the Complection of it, as *Parliamen-'tary*, from being examined in *Weſtminſter-Hall;* if he may 'be puniſhed at the Suit of the Party, he may certainly as 'well be puniſhed at the Suit of the King; if ſo, where is 'the Officer's Security? will his own Innocence ſecure him? 'that will be tryed by a Jury of the Country where the 'Election was, where it may be, they will be of an oppoſite 'Party: The Party may wait his Opportunity, and queſtion 'him twenty Years after; and if he be condemned, his Pu-'niſhment is unlimited, a *fine* may be ſet at any height for the 'King, and Damages may be given to any Value for the 'Party; where is his Security upon ſuch Proceedings? will 'he not be more afraid of ſuch Puniſhment at Common 'Law, than of any Puniſhment by the Commons? will not, 'nay, may not this Terror make him deſire to pleaſe them 'that can thus puniſh him, rather than do right, and will 'not that be dangerous to the Conſtitution of Parliament?

5thly, It is a ſtanding Order of the Houſe of Commons, *That no Peer in this Realm hath any Right to give his Vote in Election for any Member to ſerve in Parliament;* for the Houſe of Peers are one diſtinct Branch of the Conſtitution, but not the Repreſentatives of the People; and as no Peer was ever charged with the Burthen of paying Wages to the Perſons Elected; ſo the Commons alledge, they have no Right to give their Votes in the Election of them; for as the Lords are *free*, ſo ought the Commons to be, by our Conſtitution; and therefore it is another ſtanding Order,

That for any Lord of Parliament to concern himſelf in the Election of Members to ſerve for the Commons in Parliament, the ſame is a high Infringement of the Liberties and Privileges of the Commons of England; but if ſuch a Precedent as this were eſtabliſhed, they would not need to take any great pains to influence Elections; the Officers would ſoon know their Lords and Maſters; and who alone were able to protect them from the dangerous Conſequences of ſuch a new Eſtabliſhment.

6thly, The Houſe of Commons have a ſtanding Committee for Courts of Juſtice, in order to enquire and redreſs any Abuſes or Grievances ariſing in thoſe Courts, which is a great Privilege and Security to the Commons of *England;* but *if the Judges of thoſe Courts have a Power to determine the Rights of the Electors, whoſe Votes do conſtitute a Houſe of Commons, they muſt needs have a great Influence over the Members of that Houſe; and what will then become of the Security of the People?*

7thly, And *Laſtly*, There is nothing ought to be ſo dear to the Commons of *England*, as a *free Parliament;* that is, an Houſe of Commons every way *free* and independent, either of the Judges or Lords; *free* in their Elections, and *free* in the Determination of thoſe Elections; *free* to complain of Offenders, and *free* from fear of great Men in the Proſecution of them; *free* to preſerve the Properties of the Subject, and *free* to part with a ſhare of them for the publick Service; this is a *free Parliament by our Conſtitution:* But if any Perſons whatſoever, tho' they have no Right of Voting, ſhall be *free* to give their Votes at any Election, and if their Votes are not received and admitted on the Poll, ſhall be free to commence Actions againſt the Officers, at the Expence of a powerful Candidate, and when Judgment is given againſt them in *Weſtminſter-Hall*, ſhall be at liberty to bring it into the Houſe of Peers; and if their Lordſhips have Authority in this caſe to give Judgment againſt the Officers, in a Cauſe properly cognizable before the Houſe of Commons, and concerning the Rights and Privileges of that Houſe, the Nation may have a free Parliament in one ſenſe, but the Commons conceive it will be directly Contrary to the Deſign of the Conſtitution and the publick Safety; there may be a Parliament that will be free indeed to do Evil, but not to do Good; free to part with the People's Money, and divide it amongſt themſelves, but not to be frugal and ſaving of the publick Treaſure; free to run the Nation twenty or thirty Millions more in Debt, but not to find out proper Meaſures to eaſe them of ſo great a Burthen: And, in ſhort, they may be free and ready to give up thoſe Rights and Privileges which our Anceſtors have ſo bravely, and at the expence of ſo much Blood and Treaſure, maintained and delivered down to their Poſterity; but not *to follow the noble Example of the preſent Houſe of Commons, who have ſo chearfully expoſed themſelves to the Diſpleaſure of great Men, in Defence of the Rights of the Commons of* England.

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I have now gone through the Argument for the Commons, which may give ſome Satisfaction to the World of the Sincerity of that great Aſſembly, and of their Fidelity to the Truſt repoſed in them; and I hope that it doth, in ſome meaſure, anſwer the Argument for the Lords; but yet before I come to a Concluſion, I ſhall beg leave to take notice of two or three of the moſt material Arguments on the other ſide.

And as to the three Poſitions laid down by the Lords, the Commons do not diſpute (tho' others do) the firſt Poſition, That *the Plaintiff, as a Burgeſs of* Alesbury, *had a Legal Right to give his Vote for the Election of Parliament Burgeſſes:* Nor the ſecond, That *as a neceſſary conſequence thereof, and an Incident inſeparable to that Right, he muſt have a Remedy to aſſert and maintain it.*

But then they do, for the Reaſons aforeſaid, deny the third Poſition, That *this is the proper Remedy which the Plaintiff hath purſued, being ſupported by the Grounds and Principles of the ancient Common Law of* England.

For altho' it is a Maxim, That *every Right muſt have a Remedy to aſſert and maintain it;* yet it is not determined by that Maxim, what ſort of Remedy, or in what Court, though it is by another, and that is, *Optimus Legum interpres eſt Conſuetudo, Cuſtom is the beſt Expounder of the Law.*

And theſe two Maxims put together, will both determine for the Right of the Commons; for conſtant Uſage doth ſupport their Determination, but there is no Uſage at all for the Action at Law.

It is urg'd, that ſince the ancient Common Law of *England* gives the Electors their Freeholds, it ought alſo to preſerve to them their Right of Voting for the Security thereof; and that therefore the Plaintiff ought to have his Remedy in the Courts of *Weſtminſter-Hall*; but with great Submiſſion, this is begging the Queſtion; for tho' it be agreed, That *the ſame Law that preſerves the Freehold, ſhall preſerve all Benefits, Rights and Advantages depending thereupon, or relating thereunto;* yet the Queſtion ſtill remains to be determin'd, and that is, *Which way this Law ſhall be adminiſtred, whether by the Judges in* Weſtminſter-Hall, *or by the Houſe of Commons, the Repreſentatives of the People?* Whether by thoſe, who, as has been ſaid, have ſo little Cognizance of Parliamentary Matters, as to declare, 'tis not proper for them to give any Opinion of them? or by thoſe who are the Truſtees of the People? and ſuch Truſtees too, as

have a Power over the Freeholds themſelves? and that Queſtion hath, I hope, been determin'd, to the Satisfaction of all unbiaſs'd Judgments.

And foraſmuch as the Law and Cuſtom of Parliament is a part of the ancient Common Law of *England*, and one of the chief and principal parts of it too, as being exerciſed in that High Court, which is ſuperior to the Courts of *Weſtminſter-Hall*; therefore an Action like this, that is not conſiſtent with the Law or Conſtitution of Parliament, can never be ſupported by the Grounds or Principles of the ancient Common Law.

It is an ancient and ſtanding Maxim of the Law of *England*, *Privilegium non valet contra rempublicam*, and that *it is better to ſuffer a private Miſchief than a publick Inconvenience*; and therefore it is impoſſible that any Remedy can be ſupported by the Grounds and Principles of the ancient Common Law of *England*, which in favour of one Elector, tends to the Ruine and Deſtruction of all the reſt, and of the whole Conſtitution.

It is alleged in the Argument for the Lords, *p.* 13. *l.* 61. That *the Common Law is conſtant Uſage for time immemorial*; how then can this Action be ſupported by the Common Law, when no ſuch Action was ever brought before; and as the famous Judge *Littleton* did obſerve in the like caſe, ſo it may be argued in this, *If the Rights of the Electors had been elſewhere determinable than in Parliament, by any Action at Common Law, it ſhould be preſum'd that one time or other ſuch an Action would have been put in uſe*, Lit. Sect. 108.

As to the Statutes of *Cheſter* and *Durham*, tho' they ſay, the Inhabitants in general have ſuffered Loſs and Damage, for want of ſending Members, to repreſent them in Parliament, yet they no where ſay, That *every particular Elector ſuffers Damage, if his Vote being offer'd, ſhall not be received and admitted on the Poll*, which is the point in queſtion.

And the Statute of *Weſtminſter the firſt*, rightly underſtood, is ſo far from being an Argument for the Action, that it is directly againſt it; *The King commandeth upon great Forfeiture, that no great Man or other by Force of Arms, or by Malice or Menaces ſhall diſturb any to make free Elections*; but who are thoſe that make the Election, but the *Electors and the Officers*? as appears in the ſame Argument, *p.* 8. *l.* 11. therefore both ought to be free from Force and malicious Proſecutions; and it is plain that the ſaid Statute was not made

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to deſtroy the ancient Authority of the Officers, to judge of the Majority in thoſe caſes, which is implicitely confirm'd by every Statute that inflicts a Penalty upon them for not judging rightly; but only againſt great Men, who had in thoſe times diſturb'd and influenc'd Elections, and by their great power, deterr'd both the Electors and Officers from diſcharging their Duty.

But the Officers are charg'd to have done this *maliciouſly and fraudulently*; however, that will not make a thing actionable that is not ſo in its own nature; for as a learned Judge obſerves, 'If we ſhould make the words *fraudulently and* '*maliciouſly* in the Plaintiff's Declaration ſupport the Action, 'without a fit ſubject matter, all the Actions of Mankind 'would be liable to Suit and Vexation; they that have the 'Cooking (as he calls it) of Declarations in Actions of the 'Caſe, if they be skilful in their Art, will be ſure to put in the 'words *fraudulently and maliciouſly*, let the Caſe be what 'it will; they are here, Pepper and Vinegar in a Cook's 'Hands, that help to make Sauce for any Meat, but will not 'make a Diſh of themſelves.

There are many Caſes as well as this, where no ſuch Averment will ſupport an Action at Law, as in the Caſe of *a Judge, an Indictor, and a Witneſs*; and where a Perſon does not act *voluntarily*, but *by Compulſion*, as in this Caſe, in diſcharge of his Duty; and likewiſe where the Matter is not in its own Nature cognizable at the Common Law, but is *alieni fori*; as for inſtance, no Action will lie for *Breach of Truſt*, tho' done *fraudulently and maliciouſly*, becauſe the Determination of the Principal thing, *the Truſt*, does not belong to the Common Law, but to the Court of *Chancery*, and certainly the reaſon of the Caſe before us is much ſtronger, *as the Parliament ought to have more Reverence than the Court of Chancery*. Beſides, in the preſent caſe, the Defendants could not be ſaid to do that *maliciouſly*, which was not done at all, for it appears on the Plaintiff's own acknowledgment, that he was not debarr'd of his Vote.

As to the Statute of *Weſtminſter the Second*, that Act was not made to draw Actions from one Juriſdiction to another, for then it might as well ſupport an Action in the Caſe of *the Elected* as of *the Electors*, or in the Caſe of *a Truſt* in *Chancery*, or *a Legacy* in the Spiritual Court; but *where in one Caſe a Writ is found, and in like Caſe falling under like Right, and wanting like Remedy, none is found, then a new Writ*

may be framed; as for inſtance, before the Statute, an Aſſize of *Nuſance* did lye againſt the Perſon that levy'd the *Nuſance*, but not againſt his *Alienee;* becauſe there was a *Writ* found in one Caſe, and not in the other, which was of the ſame nature, cognizable in the ſame Court, and wanted the like Remedy; but no Writ can be found in the ancient Regiſter *againſt a Sheriff or other Officer, for Miſbehaviour in his Office, in any matter concerning the Right of Voting or Election of Members,* therefore this Caſe is not within the meaning of that Statute; and indeed no two Caſes, one at Law, and the other in Parliament, can want the like Remedy, becauſe they are diſtinct and vary from each other in many reſpects, and are determinable by different Courts, Laws and Cuſtoms.

'If we ſhall allow general Caſes (ſays a learned Judge) as 'an Action on the Caſe is, to be applied to Caſes relating to 'Parliament, we ſhall at laſt invade Privileges of Parliament, 'and that great Privilege of judging their own Rights and 'Privileges.

But how *Magna Charta* comes at laſt to be planted againſt the Houſe of Commons, I cannot imagine, as if the Law of Parliaments were not *the Law of the Land,* as well as the Law of *Weſtminſter-Hall.* If the Makers of that Statute were alive to anſwer for themſelves, or if you will allow of the Hiſtory of thoſe times to be the beſt Interpreter of their Minds, it would appear, that they that were ſo careful to preſerve the Rights of every particular Subject, did certainly much more intend to preſerve the Rights of all the Commons of *England;* neither is it reaſonable to conſtrue the Intent of that Statute to be, for the preſervation of the Rights of the People againſt their own Repreſentatives, but againſt the illegal Proceedings of the great Officers of the Crown.

There is a great difference (ſays the Argument) between the Right of *the Electors,* and the Right of *the Elected,* the one *is a temporary Right to a place in Parliament,* the other (they ſay) *is a Freehold or Franchize.* Now this Diſtinction tends to avoid the Strength of a powerful Argument for the Commons; but it is not at all avoided by it; for the Nature of this Right hath been explained; and which is more valuable, is the queſtion; but certainly the Right of *the Elected* muſt be in every reſpect more valuable in Law, than the Right of *an Elector;* for the Elector acts for *himſelf,* the Elected acts for the *whole Kingdom;* the Elector has a privilege of

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Voting in the Country, by reaſon of one *Freehold or Freedom*, the Elected hath a Privilege of Voting in Parliament by reaſon of *a great many*; now ſince it is adjudged by the Lords themſelves in the great Caſes of *Soames* and *Bernadiſton*, &c. that *the Rights of the Elected are ſolely cognizable in Parliament and not elſewhere*, a fortiori, *the Right of the Elector muſt be ſo too*; for if the Right of *the Elected*, tho' more valuable, and conſequently more under the Care of the Common Law, be not cognizable elſewhere than in the Houſe of Commons, becauſe it is a Matter of Parliament, how can an Action lie for the Right of the Elector, which is leſs valuable, and yet is the Foundation of that Parliament? And ſuppoſing a Wrong done to the Elector, it can be but for one Election; and therefore is as temporary as the other; and the Argument is ſtill the ſtronger for the Commons, for that in *Soames* and *Bernadiſton*'s Caſe the Action was brought *in Purſuance of the Judgment given by the Houſe of Commons*, and was the Foundation of thoſe Learned Judges Opinion, who argued for the Action; alledging, *there was no claſhings of Juriſdictions, and that the Court of King's Bench was in that caſe but miniſterial and ſubſervient to the Houſe of Commons, and ſupported their Judgment:* But all this would not do, the Judgment in the King's Bench was revers'd in the Exchequer Chamber, and that Reverſal affirm'd in the Houſe of Lords; becauſe *the Houſe of Commons were the ſole Judges of their own Rights and Privileges, and of every thing that is neceſſary for the Support thereof*; and if an Action at Law will not lie in Affirmation of the Common's Judgment, how can it be ſupported in contradiction to it? and yet this muſt frequently happen, if the Courts below aſſume this Juriſdiction, even before the Caſe hath received any Determination in the Houſe of Commons.

In the Caſe of *Strode* and *Nevil*, An. 1655, in an Action on the Caſe againſt the Sheriff for a falſe Return to the Damage of 2000*l.* after Verdict for the Plaintiff, and 1500*l.* Damages, the Court of King's Bench adjourned the Caſe into Parliament, *propter difficultatem*, whether the Action did lie or not; where it is to be obſerv'd, that it was not adjourn'd into the Houſe of Peers, but into the Houſe of Commons, as the only proper Judges in all Caſes of that nature concerning Elections; ſo careful were they of the Rights of the Commons.

And let not the Iniquity of thoſe times of Rebellion be objected to this Inſtance; the Argument from thence ex-

tremely confirms the Right of the Commons; for if it be conſidered, that *Cromwell* had then created a new Houſe of Lords, and wanted nothing but a Houſe of Commons to eſtabliſh his Uſurpation; that to this purpoſe he had form'd a new Model of an Houſe of Commons, and overturn'd the Method of Elections, depriving all the Boroughs of their Rights, and cauſing the Choice and Returns of Members to be made by the County; yet the Name of a Houſe of Commons remained, and even that was ſo reverenced in thoſe Days, that none would attempt to deprive them of their eſſential Privilege of judging of Elections; no Influence could biaſs the Judges; they thought it ſo inherent, that they would not preſume to intermeddle in it.

As to the Officers being *arbitrary*, they will be no more encouraged to be arbitrary, by leaving the Determination to the Commons, than they have been ever ſince the Foundation of the Government. But 'tis ſaid *the Commons may by theſe means chooſe their Electors*. No more than has ever been practis'd, by determining doubtful Elections; and if that *Determination* be eſteem'd an *Election*, would it be ſafer for the People, that *the Lords or Judges ſhould elect a Houſe of Commons*? For if the Reproach were juſt, as it is not, that the Houſe of Commons do chooſe whom they like beſt: is it impoſſible that the Lords in that day ſhould do ſo too; who are alſo Men, and alike ſubject to Paſſions?

As to the Diſtinction that is made, that the Houſe of Commons are Judges of the Right of Electors to one purpoſe, but not to another; that is a very new Diſtinction, and is fully anſwer'd in the precedent Diſcourſe, where it is demonſtrated, not only that the Commons are the proper Judges of thoſe Rights, but the ſole Judges thereof; the latter being the natural Conſequence of the former, both for their own Security, and to avoid all the Inconveniencies above-mentioned, by *two* different and inconſiſtent Determinations in the ſame Caſe.

It is alledg'd, That *the ultimate Reſort in point of Judicature is lodg'd with the Lords;* And therefore upon a Writ of Error brought before them, they may determine as they think fit; but that is, I preſume, *according to the known Laws and Statutes of the Realm*, for, with great Submiſſion, their Lordſhips have no Power by their Judgments *to change the Law*, or to take from the Commons that Judicature which legally belongs to them; or if they do, the Commons

ought

ought legally to proteſt againſt it, or be juſtly accus'd of a Breach of Truſt.

It is ſaid, that if this Action did not lie, *how would occaſions of Complaint be multiply'd?* Anſwer, juſt as much as they have been heretofore, before any ſuch Action was ever brought, which is juſt none at all; but the *Officers at this rate, may reject the Votes of Electors with Impunity;* that is to ſay, at Common Law, but not in Parliament; where the Puniſhment is ſometimes thought to be too ſevere: But then *the Remedy in the Houſe of Commons is worſe than the Diſeaſe;* why ſo? becauſe the Elector has a Remedy at the expence of the Candidates? or why worſe in this caſe, than in in all others ſince the Conqueſt? But *the Commons want time:* Leave that to themſelves; when they have not time to preſerve their own Privileges, they may pray to the Lords and Judges for their Aſſiſtance. But *they are not upon Oath:* Nor the Lords neither; they *cannot give Damages,* there is none due, neither is that point determined. But *to deny this Action, is to deny the Benefit of the Law:* Not at all; it is to preſerve the Order and Courſe of Juſtice for all and every one that wants the Benefit of it. But that can never be *a Privilege of Parliament that is incompatible with the Rights of the People:* True, but this is ſo far from being incompatible, that it is abſolutely neceſſary to preſerve their Rights.

And thus, with great Submiſſion, it ſeems to be demonſtrated, That the Plaintiff *had no good Cauſe of Action* in this Caſe.

1*ſt*, Becauſe *the Plaintiff was not hindred by Force or otherwiſe from coming to the Election, nor from offering and declaring his Vote; and conſequently was not deprived of his Right, or debarr'd of his Vote by the Default of the Officer, in not receiving and admitting the ſame upon the Poll.*

2*dly*, Becauſe *this is a Matter of Parliament, and all ſuch Matters are cognizable there and not elſewhere.*

3*dly*, Becauſe *there is a Remedy appointed in the Houſe of Commons to puniſh this Default in the Officer, which is proper and adequate to the Nature of the Offence.*

4*thly*, Becauſe *ſuch a new Precedent as this, will introduce a Multitude of Inconveniencies, by expoſing Mayors, Bailiffs, and other Officers, whether they do diſcharge their Duty or not, to multiplicity of Actions, vexatious Suits, and unſupportable Expences, and will ſubject them to different and independent Juriſdictions and inconſiſtent Determinations in the ſame Caſe, without Relief.*

 5*thly*,

5*thly*, *Becauſe ſuch Actions are not conſiſtent with the Conſtitution of Parliaments, or the publick Safety.* And here I might alſo add,

6*thly*, 'Becauſe ſuch Officer as to the receiving or refuſing 'Votes, and declaring a Majority, doth act as a Judge.

7*thly*, 'Becauſe he is not admitted to take Security to ſave 'him harmleſs in ſuch Caſes; and it would be the moſt un-'reaſonable and grievous thing in the World, that he ſhould be 'bound to act without any Deliberation, and not to be allow-'ed to take any Security, and yet be liable to an Action, 'which way ſoever he takes.

8*thly*, 'Becauſe this is a new Invention, and ought to 'have the ſame Fortune that other *Novelties* heretofore at-'tempted in our Law have had; and eſpecially in Matters 'relating to Parliament there is no need of introducing Novel-'ties; for the Parliament can provide new Laws to anſwer any 'Miſchiefs that ariſe, and it ought to be left to them to do it.

9*thly*, 'Becauſe general Caſes at Common Law (as an Action 'upon the Caſe is) ought not to be applyed to Caſes relating 'to Parliament; for if they ſhould, we might by the ſame 'Reaſon invade all the Privileges of Parliament, and even 'that great Privilege, of judging of their own Privileges.

10*thly*, 'Becauſe it would be both diſhonourable and dan-'gerous to Parliament, that there ſhould be no Protection for 'ſuch Officers in their Service.

11*thly*, and *Laſtly*, 'Becauſe ſuch a Proceeding would oc-'caſion *a change of the Law*, and the Commons of *Eng-'land* were of the ſame Opinion with their Anceſtors, who 'unanimouſly declared, *Nolumus Leges Angliæ Mutari.*

From what hath been ſaid, the Votes and Reſolutions of the Houſe of Commons are to be juſtified in every Particular.

1*ſt*, That *they have the ſole Right to examine and determine all Matters relating to the Right of Elections of their own Members;* for elſe there can be no ſuch thing in *England* as a *Free Parliament, or a Free People.* And hence it follows,

2*dly*, That neither *the Qualification of any Elector, or the Right of any Perſon elected, is cognizable or determinable elſewhere, except in Caſes otherwiſe provided for by Act of Parliament.* And it is alſo evident,

3*dly*, That *the determining the Right of an Elector in any Court of Law, will expoſe the Officers to all the Inconveniencies above-mentioned.* And from thoſe Premiſes it will alſo follow,

4*thly*

4thly, That *Matthew Aſhby*, *having in Contempt of the Juriſdiction of the Houſe of Commons, proſecuted the chief Officers of* Alesbury *at Law, for not receiving and admitting his Vote on the Poll, was guilty of a Breach of the Privilege of that Houſe.* And therefore it was highly neceſſary, that the Commons ſhould defend their Privileges by the two laſt Reſolutions, *viz.*

5thly, That *whoſoever ſhall preſume to proſecute or plead in ſuch an Action, are guilty of the Breach of the Privilege of that Houſe.* And,

6thly, That *theſe Reſolutions be fixed on the Gates of* Weſtminſter-Hall.

Theſe are the only Remedies we have, and which our Anceſtors have formerly made uſe of on the like Occaſion, to defend *the Rights and Liberties of the Commons of* England: And it is truly obſerved on the other ſide, *That they who releaſe their Power, do loſe their Right; to which the Commons of* England *can never conſent.*

Give me leave then, in the laſt place, and with all due Regard and Deference to the Houſe of Peers, to examine their Lordſhip's Reſolutions, and how far the Houſe of Commons are juſtly to be affected by them.

As to the firſt Reſolution, It is agreed, That every Legal Elector, that is wilfully hinder'd by the Officer, or any other, to give his Vote, may maintain an Action at Law; in Caſe that Hindrance was by any Act done, as by open Force or otherwiſe, but a bare Nonfeaſance, Omiſſion, or not receiving his Vote, is not ſuch a Hindrance, as will ſupport an Action; becauſe the Plaintiff is not thereby debarr'd of his Vote, as hath been demonſtrated.

As to the Second Reſolution, The ſame depends on the former; for the Commons do not aſſert what is there ſuppos'd; but what they have aſſerted, is ſo far from being *Deſtructive of*, that it is *abſolutely neceſſary to preſerve the Property of the Subject, and the Freedom of Elections*, as hath been already proved; and it is ſo far from *incouraging Corruption and Partiality in Officers*, that it hath been found *the beſt way to prevent it.*

Neither will it ſubject the Freeholders and the Electors to, but on the contrary, will *preſerve them, as it hath done hitherto, from any Abſolute or Arbitrary Power whatſoever.*

As to the Third Reſolution, Since it appears that the Houſe of Commons have the ſole Right of Judicature in theſe Caſes, and that *Aſhby, in Contempt, and to the Subverſion of*

 their

their Jurisdiction, and even of the Constitution of Parliaments, did commence and prosecute an Action at Common-Law; it is humbly conceived, that the Commons, declaring him guilty of a Breach of the Privilege of that House, did not tend *to destroy, but preserve the Judicature of Parliament*; and was so far from subjecting *the Law of* England *to the Votes of the House of Commons*, that *those Votes were made in Defence of the Law and Custom of Parliament, which is the highest and noblest Branch of the Law of* England.

And as to the Fourth Resolution, The Commons conceive that this Proceeding may be justified from the Fundamental Rule and Maxim of the Law of Parliaments above-mentioned, *That the House of Commons are sole Judges of their own Rights and Privileges*; and therefore *to assert their Rights, is not to controul, but support the Law; it is not to hinder, but preserve the Course of Justice; neither does it subject the Properties of* English *Men to the Arbitrary Votes of the House of Commons, but on the contrary, is the only Means to secure and preserve from Arbitrary Power, the Rights and Liberties of all the Commons of* England.

And thus, upon the whole Matter, we will conclude as we begun: *No such Action as this, was ever brought before by any Elector, since the Foundation of the* English *Government*. This Assertion alone, if it be true, and we don't find it pretended to be controverted, were Reason enough, in all prudent Administrations, to prevent even the Attempt of introducing so dangerous and so entirely new a Practice; which it is not possible, in the Nature of our Constitution, that the Commons of *England*, in Parliament assembled, of what Temper soever constituted, can suffer to be brought upon them.

In all former Times private Persons have been afraid to make Experiments entirely new in any Government, and the Attempts of it have very often ended in the Disturbance of that Government, where they were practiced; but more commonly in Punishments very remarkable on the Promoters.

But in this Age, where Men do distinguish themselves by many new Notions in Religion, Politicks, and Morals, some have presumed to make Steps very contrary to the Prudence of all their Predecessors; and many Contradictions break out, to the Surprize and Amazement of private poor Understandings. All *Parties* are to be discountenanced as Enemies to publick Peace and Quiet, yet *Factions* do in Truth grow

higher than ever they were known; Union and Moderation are piouſly recommended from the Throne, to make us all happy, yet Men have found out many Inventions to foment and widen Diſputes, unprecedented in their Warmth and Bitterneſs, even amongſt the Eſtates of Parliament, from whoſe Unanimity in Councils alone thoſe mighty deſirable Ends of Peace and Union are to be hop'd for; and to compleat all this Unfortunate Conjuncture of Affairs againſt a New Parliament, which may be very ſoon called, and cannot be long delayed, there is a Proffer made for a new Method of trying, who ſhall be the Electors of it: Which if it ſhould be practiced, cannot but beget a new Calamity.

There have indeed been Princes, who have required the publick Officers to return ſuch Members as they ſhould name; but it is happy for us, that we are bleſſed with an Excellent Queen, that does not deſire to exerciſe any ſuch Power; and it is happy for us too, that we have Judges, who do not think that they, or the Lords, have Power to determine the Right of our Electors, and conſequently of our Elections; and that we have yet a Houſe of Commons to aſſert our Rights againſt ſuch Innovations; And ſince I may with Truth and Reaſon aſſert, that even the Houſe of Commons, tho' Plenipotentiaries of the People, cannot ſurrender their Eſſential Rights, which they were choſen to defend; it is not to be wonder'd, if they do not tamely ſuffer any others to take from them, what they themſelves have not Power to give up; and that is, theſe fundamental Rights and Privileges of the Houſe of Commons, which are abſolutely neceſſary to preſerve *Free Parliaments* and *a Free People.*

FINIS.